THE INSTITUTIONS OF Military Law, Ancient and Modern:

WHEREIN

The most Material Questions and Cases relating to MARTIAL DISCIPLINE, are fully examined and cleared from the Principles of the CIVIL LAW, and present uniform Practice of this and NEIGHBOURING NATIONS.

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TO

The Right Honourable,

DAVID

Earl of *WEMYSS*,

Lord *ELCHO*, &c. &c.

My Lord,

THE following Treatiſe earneſtly begs your Lordſhip's Patronage, and is humbly preſented and dedicated to you; not ſo much becauſe your Noble and Illuſtrious Anceſtors have been among the greateſt Glories and Ornaments of the Ages they lived in, and the ſtrenuous Aſſerters and Defenders of their Country's Liberty; nor is it even upon the Account of your

your own rare and admirable Perſonal Endowments, which have deſervedly acquired to your Lordſhip the Love and Eſteem of all good Men; neither is it becauſe the Author looks upon it as his greateſt Honour that he is your Kinſman; But rather as a publick Teſtimony of Reſpect and Gratitude for the many ſubſtantial Favours by your Lordſhip conferred upon,

My Lord,

Your Lordſhip's moſt humble, and

moſt obliged Servant,

AL. BRUCE.

PRE

PREFACE.

THo' *this be the firſt Appearance this ſmall Tract has made in the World, yet it was finiſhed and prepared for the Preſs many Months ago, at a Time when the Author thought a Diſcourſe publiſhed on this Subject, would be neither* unprofitable *nor* unſeaſonable. *But the great Occaſion of writing on that Head, being ſoon thereafter removed from this Place of the World, I wiſh I were put to apologize for the whole Book as one intire Impertinency, as being written in an Age and Nation, where* War (*the general Cauſe of all* military Inſtitutions) *is neither felt nor feared.*

But I fear I have pitched upon a Subject not like to be out-dated; and therefore how many ſoever the native *Defects of the following Diſcourſe may be, yet it's but too probable it will not be attended with this* accidental *one, of being written on a Subject, the Knowledge whereof is intirely uſeleſs.*

I ſhall therefore wave all further Apologies, and in the next Place acquaint the Reader, that military Law *being the Subject in my View, I judged*

judged it not improper, by Way of Introduction, to premiſe ſome of the moſt uſeful Caſes and Queſtions concerning War in general, which have exerciſed the Pens of learned Men theſe many Ages: In examining and diſcuſſing whereof, I have neither arrogantly affected Singularity in Opinion, nor on the other Hand ſlaviſhly and blindly traced the beaten Road of a Multitude of Writers; nay, nor even the moſt eminent Authors, in every Thing they have ſaid on theſe Heads; but among Varieties of Opinions, have choſen that which to me ſeemed moſt conſonant to natural Equity, and the Analogy of the common Law, which may indeed not improperly be called the written Law of Nations.

In the ſucceeding Parts of the Treatiſe, I have made Choice of that Method which in all Law Diſcourſes appears the moſt clear and diſtinct, viz: in the prior Part of each Title to point out the Roman Law by it ſelf, as the Rule, and then by Way of Exception, to ſubjoin the modern Laws and Cuſtoms relating to that Title.

It is true, that in two other Law Tracts which I lately publiſhed, the preſent Laws and Cuſtoms of Scotland only (without mentioning thoſe of other Nations) are the Subject of the latter Part of each Title, as being written mainly for the Benefit of Scotſmen; and the Author being but very ſuperficially acquainted with the Laws of our neighbour Nations. But in the enſuing Inſtitutions, I found my ſelf obliged a little

a little to vary the Method, and to bring up the Rear of each Title, with an Account of the modern European *Laws and Cuſtoms in general, but chiefly thoſe of* France, Holland, *and* Sweden, *which are looked upon as the moſt Warlike Nations in our Days: To which are alſo ſubjoined the* Engliſh *martial Laws, as well for His* Majeſty's *Forces beyond Seas, as thoſe in* Britain: *For as to the Laws and Cuſtoms of* Scotland *relating to the* Militia, *they are either ſo old, or ſo few in Number, that (tho' I have indeed taken Notice of ſo many of them as I knew of) if I had confined my ſelf to* theſe, *the Reader would have been but little wiſer by peruſing the following Leaves.*

For tho' it can ſcarce be preſumed, That the moſt Martial *Nation in* Chriſtendom *wanted of old its own* military Laws, *nor ſo much as doubted that, were we now in the Circumſtances of our Anceſtors, we would be as exact and pointed on that Head as any other Nation. Yet* Firſt, *Our* Coalition, *and then our intire* Union *with our Neighbours of* England, *having wholly ſuperſeded to us, among many other Burdens, the Fatigue of making either* Martial *or* civil *Laws, we are now wholly regulated in Matters of War, by the Conſtitutions and Cuſtoms of other Nations.*

In laying down the Principles of the Roman *Law upon this Head, I have mainly followed the Text of the* Corpus Juris, *and where that fail-*

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ed me, the most celebrated Commentators and eminent classical Authors. And in Reference to later Constitutions and Customs, I have chiefly had an Eye to what Rules and Articles of War have been published within these few Years by the above-named Nations, and sometimes to their own Writers on this Subject. And Lastly, Where I could have the Occasion, I endeavoured, in Things doubtful, to get the Opinions and Solutions of those whose Experience inables, and Profession obliges them to a more exact Knowledge of military Affairs, than I can pretend to.

And therefore, if in any Thing relating to the modern Militia, I have fallen into any Error or Mistake (tho' it's hoped there will not occur very many, nor very great Occasions for a Razure) it's expected the Reader will neither impute it to Negligence nor Design, but meerly to Want of better Information.

THE INSTITUTIONS OF Military Law, &c.

TITLE I.

Of War in General, and its various Kinds; where ſeveral Queſtions relating thereto, are examined and diſcuſſed.

ALTHO' it has generally in all Ages been taken for granted, That in the confuſed Noiſe of War, Laws muſt be ſilent: Yet certainly the Obſervation is as erroneous and ill founded, as it's ancient and common; ſince as no War can be warrantably undertaken, unleſs for

Recovery of what is unjuſtly detained from us, or for ſome other ſuch Cauſe ariſing from natural Equity; ſo neither ought it to be managed but within the due Limits of Juſtice and Fidelity. For as Courts of Juſtice were at Firſt conſtituted for overawing and curbing of thoſe, whom we are able to command; ſo, againſt ſuch as either are, or think themſelves to be our Equals, War is abſolutely needful: And therefore in Order to its being carried on with an Eye to Prudence, Juſtice and Clemency; it's no leſs neceſſary, That Law and Order be obſerved here, than in managing a civil Proceſs.

2. Indeed the common Obſervation I have mentioned, does undoubtedly take Place, if only applied to the *civil* or *municipal* Laws of a Nation: But it's quite otherwiſe in thoſe *eternal* Laws of Nature and Nations, which accommodate themſelves to the Circumſtances of all Times and Places, and which therefore no Man nor Society of Men, can, at any Time, or in any Circumſtance, infringe or ſuſpend.

3. This we find eminently exemplified in the ancient *Romans*, who, for ſeveral Ages, never undertook a War, but upon the ſtricteſt Rules of natural Equity and Juſtice; as knowing how greatly the well grounded Perſwaſion of the Righteouſneſs of a Cauſe, does generally influence the Victory. And tho' it muſt be acknowledged, That Succeſs is not ſo intailed

tailed upon the juſteſt Cauſe; but that it may be, and often is cut off, either by the Guilts of the Undertakers, or by ſome other ſecret Diſpoſal of the Divine Wiſdom: Yet ſtill it's an irrefragable Truth, that a good Cauſe naturally inſpirits the Generality of Men to great and glorious Actions. And as this is its genuine Effect upon our ſelves, ſo no leſs is the Influence that it commonly has upon others to join in Friendſhip and Confederacy with us, no Man being eaſily induced to an Alliance with thoſe, whom no Law, Juſtice, nor ſolemn Promiſe can bind.

4. Since *War* then is the Occaſion of the *military Law*, (which is the Subject here to be treated of) and there being fix'd and known Laws of War, as well as Peace, 'twill, I hope, be no impertinent Introduction to the following Diſcourſe, to premiſe ſome few Poſitions and Queſtions concerning that Subject.

5. As to the Word, WAR, it ſeems to be an Abbreviation of the barbarous *Latine* Name, GUERRA, which ſignifies the ſame Thing, and is frequently uſed in the Collection of the common *feudal Cuſtoms*. But the *Latine*, BELLUM, derives a *Duello*; both becauſe two contending Parties are here neceſſarly required, and that in all the ancienter *Roman* Authors, War is called *Duellum*; and many other Words there are, which beginning with DU, were afterwards when that Lan-

guage became refined, written inſtead thereof, with, B. *(a)*

6. It would be Impertinent here to give any logical Definition or Deſcription of War, or to paint that Flame whoſe Scorchings all the World has felt: 'Twill be ſufficient therefore to ſay, That there are in General three eſſential Requiſites, to the making a War ſolemn.

7. *Firſt*, It is required, That it be managed by *Force of Arms*; in Oppoſition to ſuch *civil Diſſentions* (tho' the Subject in Controverſy were a whole Kingdom) which are ſubmitted to the Arbitration of third Parties, and decided without Violence. Of theſe, ancient Hiſtory affords many notable Examples, where Debates that have ariſen about whole Territories, betwixt neighbouring Princes and States, have been ſubmitted to, and determined by foreign Judicatories (*b*). And particularly the Deciſions of the Parliament of *Paris*, in many ſuch Caſes, have been greatly celebrated by all Authors, whether Lawyers or Hiſtorians. Nor want we Inſtances even at Home; for ſuch was the Conteſt for the Crown of *Scotland*,

(a) Grot. *de Jur. Bell. ac Pac. Lib.* 1. *Cap.* 1. *Num.* 2.
(b) *See* Alber. Gentil. *de Jur. Bell. Lib.* 1. *Cap.* 3. and the *Auteur du bouquet hiſtorial. Tit. de la Juſtice.* Grot. *de Jur. Bell. ac Pac. Lib.* 2. *Cap.* 23. *Num.* 8. Swartzmaier. *Miſcel. Jur. Cap.* 4.

lund, after the Death of King *Alexander* III. which was referred to the Determination of *Edward* I. of *England*, whoſe Way of managing that Controverſy, may juſtly deter all after Ages, from hazarding Matters of ſo great Importance, to the Determination of a Foreigner, eſpecially a bordering powerful Prince.

8. *Secondly*, Both the contending Parties are to be ſuppoſed a free and independent Prince or State. And this excludes from the Privileges competent by the Law of Nations to a ſolemn War, all Robberies, (let the Numbers of the Graſſators be never ſo great and formidable) all Seditions, civil and inteſtine Hoſtilities, *&c.* For in theſe Caſes, there are neither two contending Nations, nor any War lawfully denounced, but fellow Subjects of the ſame Prince, contending not for the Ruin, but Preſervation of the State; tho' undoubtedly a Country is thereby for the moſt Part a greater Sufferer, than by the moſt bloody and expenſive foreign War (*a*): For here there is no Poſſibility of Succeſs, the meer Fight implies a Defeat, and the Swords of all Parties meet in the Bowels of the Publick. But it's unneceſſary to inſiſt on the Effects of ſuch civil Diſcords, of which we of this Nation have had ſo many, ſo freſh, and ſo coſtly Evidences, as

(a) *L.* 21. §. 1. *ff. de Captiv.* 49

far tranſcend the moſt tragical Deſcriptions. GOD grant we may never have other than our paſt Experiences to meaſure them by. Only, as I have hinted, ſuch civil Commotions, by the general Practice of moſt Nations, have never been allowed the Privileges of a ſolemn War: And hence it is, That Priſoners taken in ſuch Expeditions, did not according to the common Law, *(a)* become Slaves to the Conquerours, (as all Priſoners are by the general Law of Nations, unleſs in Caſe of ſome previous Paction) but as putride Members were to be cut off: Neither did the notable Privilege of the *Jus Poſtliminii* in them take Place, nor were the Victors allowed the Honour of a Triumph, which otherwiſe was ſo much courted by the *Roman* Generals. Thus *Florus (b)* ſpeaking of the War againſt *Sertorius*, ſays, *Victores Duces externum id magis quam civile Bellum videri voluerunt, ut triumpharent:* And *Lucan (c)* of the civil War betwixt *Cæſar* and *Pompey*, ſays,

Bella geri placuit nullos habitura Triumphos.

9. *Thirdly*, It is neceſſary, That the War be ſolemnly denounced and proclaimed, of which I ſhall ſpeak hereafter. *Tit.* 5.

10. Before

(a) *d. L.* 21. *ff. de Captiv.* (b) *lib.* 3. *Cap.* 22. *in Fin.* (c) *lib.* 1. *Prop. Princ.*

10. Before we proceed further, it will not be improper to enquire a little into the Lawfulneſs of War; and this becauſe not only ſome peeviſh *Phanaticks* of the laſt Ages, but even ſome eminent *Fathers* of the primitive Church, have in their Writings ſeriouſly contended, that among *Chriſtians*, it's intirely unlawful, upon what Account ſoever.

11. Firſt then, if we take a View of the common Law of Nature as deſcribed by *Juſtinian (a)*, which according to him, is common to us with the brute Creatures, we ſhall find nothing there repugnant to the Uſe of armed Force in ſome Caſes; the Conſervation of Life and Limbs, and the acquiring or preſerving the Comforts and Neceſſaries of Life, being moſt agreeable to the natural Inſtinct of all Animals; and for attaining thoſe Ends, to uſe Force when it's neceſſary, is nowiſe repugnant to that Law, ſince to every Creature there is a proportional Meaſure of Strength allotted, whereby they are naturally led to help and defend themſelves, and propel Injuries.

12. But in the next Place, *right Reaſon* (which in Propriety of Speech, only merits to be called the *Law of Nature*) nowiſe prohibits every Kind of Force, but that only which

(a) §. 1. *Inſt. de I. N. G. et C.*

is inconsistent with Society, or which invades or violates another's Right. For the great End of all Society being, that each Individual be secured of what is his own, by the joint Assistance of the other Members; this undoubtedly took Place, even before the Dominion and Property of Things was established in the World; since even then there were some Things that could never fall under Communion, such as Life, Limbs, Liberty, *&c.* Nay, even in Things common to all of a Society, every Member being free to take of these, as much as Nature required, the depriving him of that Right would certainly be an Injury, which therefore he might lawfully propel.

13. But this is yet more evident from *Scripture* Testimony; where we see, that when *Abraham* with his Servants and Confederates, had atchieved a notable Victory over the four Kings that had pillaged *Sodom*, yet GOD by *Melchisedek* approves of the Action: *(a) Blessed be the most High GOD, which hath delivered thine Enemies into thy Hand.* And yet we read of no special Warrant *Abraham* had for ingaging in that War; so that the Expedition being undertaken by him who was both transcendently Pious, and eminently Wise and Prudent, was purely the Dictate of the Law of

(a) *Gen.* 14. 20.

of Nature. There is alſo another Inſtance in ſacred Hiſtory, *viz.* *Moſes* his Expedition againſt the *Amalekites*, that is a clear Confirmation of the Lawfulneſs of War in ſome Caſes: (*a*) Which tho' we read not that GOD did expreſly command, yet it's certain, that afterwards he ratified and approved the Action.

14. It is yet further manifeſt, that a War may be lawful and juſt, tho' there be no ſpecial and expreſs Warrant for it from the GOD of Battels his preſcribing general and laſting Laws and Articles of War to his own People: (*b*) Where he plainly diſtinguiſhes the Caſe of the ſeven devoted Nations from all others; and tho' nothing be there ſubjoined to inform us, what are the juſt and lawful Cauſes of War, yet even thence we may ſafely conclude, that by the Light of Nature they are ſelf evident; whereof the following Hiſtory of the Old Teſtament ſupplies us with ſome eminent Inſtances, ſuch as the Expedition of *Jephtha* againſt the *Ammonites*, for Defence of the Frontiers (*c*); and that of *David* for avenging the Indignity put upon his Ambaſſadors (*d*). And it's very remarkable, that the Author of the Epiſtle to the *Hebrews*, (*e*) expreſly

(a) *Exod.* 17. (b) *Deut.* 20. 10, 15. (c) *Judges* 11. (d) 2 *Sam.* 10. (e) *Heb.* 11. 33, 34.

preſly ſays, That *Gideon*, *Baruch*, *Samſon*, *Jephtha*, *David*, *Samuel*, &c. *through Faith ſubdued Kingdoms*, &c. *waxed Valiant in Fight, turned to Flight the Armies of the Aliens*, &c. where, under the Word, *Faith*, is certainly, among other Things, underſtood a firm Perſwaſion, that the Action pleaſed GOD. Thus alſo it's ſaid of *David*, (a) That he *fought the Battels of the LORD*.

15. There is indeed an Old Teſtament Text, that is by ſome objected againſt all War, *viz.* the Law given to *Noah* and his Poſterity after the Flood, *and ſurely your Blood of your Lives will I require*, &c. (b). But certainly the Prohibition there to ſhed Blood, can extend no further than the Interdict of the ſixth Command, which cannot be ſaid to prohibit either capital Puniſhment, or juſt and lawful War; for neither of theſe two Laws is any new Conſtitution, but only calls us back to the Law of Nature, and declares and repeats what was thereby already injoined; ſo that the Words in both are undoubtedly to be underſtood of the Bloodſhed of an innocent Perſon, willfully committed by a private Man. And of this Senſe of the Precept given to *Noah*, I have already taken Notice of two notable Inſtances, for tho' neither *Abraham* nor *Moſes* were ignorant of that

(a) 1 *Sam.* 25. 28. (b) *Gen.* 9. 5, 6.

that Precept, yet they both took Arms, well knowing that it was nowiſe repugnant to the Law of GOD, tho' neither of them had a ſpecial Commiſſion.

16. Neither is War abſolutely reprobated even under the *New Teſtament* Diſpenſation, ſince there we find ſeveral Texts, whence its Lawfulneſs may be very regularly inferred, as 1 *Tim.* 2. 1, 2, 3. *I exhort therefore that Supplications*, &c. *be made for Kings, and for all that are in Authority*, &c. From which Text we plainly learn, 1*ſt*, That it's acceptable to GOD, that Kings become Chriſtians. 2. That being ſo converted, it is nowiſe diſſonant from the Goſpel Economy, that they continue in that Dignity. 3. That it is the Duty of Chriſtian Kings to afford as much as they can, *a quiet and peaceable Life* to thoſe under their Authority. But how they are to do this, is told us by the ſame Apoſtle, Rom. 13. 4. *For he is the Miniſter of GOD*, &c. *for he beareth not the Sword in Vain*, &c. *and is a Revenger to execute Wrath upon him that doth evil.* Moreover, in that ſame Text, the ſuperior Powers are ſaid to be of GOD, and the *Ordinance of GOD*; and therefore Honour and Obedience is indiſpenſibly due unto them, and Reſiſtance is there threatned with no leſs Pain than *Damnation.* If Chriſtians then may be Kings, it's lawful for them upon Occaſion, to make War, ſince without the Power of the Sword, there can be no Magiſtracy.

17. This

17. This will yet further appear from *John Baptiſt* his Exhortation to the Soldiers, whereof many were *Jews*, (a) who being demanded by them what they ſhould do in Order to Salvation, he is far from injoining them to quit the Vocation as unlawful, (which, if it had been ſo, he would undoubtedly have done) but only exhorts them *to do Violence to no Man, neither accuſe any falſly, and to be content with their Wages.* To which we may add the Inſtances of *Cornelius* the Centurion, who received the Gift of the Holy Ghoſt; and of *Sergius* the Governour, the one converted by *Peter*, the other by *Paul*, yet neither do we find the one injoined to abandon the Profeſſion of the Sword, nor the other his Office of a ſuperiour Magiſtrate: Now both theſe Offices being ſtill lawful under the Goſpel, it neceſſarly follows, that War in ſome Caſes is warrantable, ſince the Caſe may be ſo ſtated (as when Robbers aſſemble in Troops) that ſuch Criminals cannot at all be otherwiſe puniſhed.

18. It will be needleſs therefore to take Notice of ſuch Objections as are drawn from Texts in the New Teſtament, ſince in the General, theſe do plainly ſpeak, not to Magiſtrates, but to private Perſons, who are injured;

(a) *Luke* 3. 14.

injured; and therefore do only refer to *private* Revenge. Beſides, that if the Power of the Sword againſt common Graſſators and other Criminals, had by the Goſpel been wholly interdicted, there would thereupon undoubtedly follow a Deluge of all Wickedneſs, which we ſee even now that Judicatories are erected, daily overſpreading the World. And therefore we may very juſtly conclude, That if it had been our Saviour's Intention to introduce ſuch a State into the World, as was never before heard of, he would certainly have delivered his Commands in the moſt expreſs and peremptory Terms, forbidding all his Followers to judge in capital Cauſes, or carry Arms; and yet it is plain, that this was not done. Nay further, it is pretty evident, that even the judicial Law of *Moſes* did not ceaſe till the final Deſtruction of *Jeruſalem*; and hence it is, That the Apoſtle *Paul (a)* acknowledges that the high Prieſt *ſat to judge after the Law*, and *Chriſt* himſelf declares, That *he came not to deſtroy, but fulfil it*: If then that Law was ſtill in Force, and binding, ſo long as the *Jews* continued a Nation, it clearly follows, That ſuch of them as were converted to Chriſtianity, could not decline the Magiſtrates Authority,

(a) *Acts* 23. 3.

Authority, when judging according to the Law of *Moſes*. But I proceed to ſome of the moſt remarkable Diviſions of War.

19. *Firſt*, War is either *publick*, *private*, or *mixt*. The firſt *is that which is undertaken and managed by publick Authority*; the ſecond *by thoſe who have none*; the third *is that which is publick only on one Side*.

20. That private War may in many Caſes be lawful, can ſcarce be called in Queſtion: As when we are ſuddenly attack't, and either have no Superior Power to apply to, or the Matter is Momentaneous, and ſuffers no Delay: (*a*) For in ſuch a Caſe, Self-defence is not only *permitted*, but ſeems plainly *injoined* by the Law of Nature; (*b*) nothing being more conſonaut to that Law, than for a Man to defend his Perſon and Property from the Invaſion of rapacious Vultures. This is elegantly expreſſed by *Cicero*, (*c*) *Hoc Ratio Doctis*, ſays he, *& Neceſſitas Barbaris, & Mos Gentibus, & Feris Natura ipſa præſcripſit, ut omnem ſemper Vim, quacunque Ope poſſent, a Corpore, a Capite, a Vita ſua propulſarent*. Neither in this Caſe ſeems there to be any Difference, whether the *Aggreſſor*, or *Defender*, or *both*,

(a) *L.* 10. §. 16. *ff. Quæ in Fraud. Cred.* Grot. *de Jur. Bell. Lib.* 1. *Cap.* 3. *Num.* 2. (b) *L.* 3. *ff. de J. & J.* (c) *in Orat. pro* Milone.

both, be one or many, ſince Numbers can have no Influence on the Juſtice of a Cauſe. And this undoubted Law of Nature we find fully confirmed and explained in holy Writ; (*a*) *If a Thief be found breaking up, and be ſmitten that he die, there ſhall no Blood be ſhed for him*, &c. Which Precept has very probably been adopted, as many others were, by the *Greek* Republicks, and from thence borrowed by the *Romans*; for in the ancient Law of the 12 *Tabb.* the ſame Thing is thus expreſt; *Si Nox Furtum faxit, ſi im aliquis occiſit, Jure cæſus eſto.*

21. Yet there are ſome even of the Fore-fathers of our Faith, (ſuch as *Auguſtine* and *Ambroſe*,) who, tho' they allow of *publick* War upon juſt and lawful Grounds, yet utterly reprobate that which is *private*, as wholly inconſiſtent with the Goſpel Economy, and for this adduce many Paſſages in the New Teſtament againſt Revenge, and touching the loving our Neighbour as our ſelves, *&c.* But it would be conſidered, that the Goſpel commands us to love our Neighbour, *as*, not *above* our ſelves. Nay, where there is a Parity of Danger, we are not forbidden to conſult our own Safety, before that of others. And this we find exemplified to us by the Apoſtles

(a) *Exod.* 22. 2.

Apoſtles themſelves, ſome of whom even to the very laſt, and in their Maſter's Company, travelled with Swords; which *Joſephus* tells us was the Practice alſo of other *Galileans*, when going up to *Jeruſalem* to the Feaſt, the Highways being then much infeſted with Robbers, which he ſays, was the Cuſtom even of the harmleſs *Eſſenes*. As to the other Texts commonly alledged, they do plainly relate to pure private Revenge, and therefore can never be ſtretched to prohibit natural Self-defence.

22. But except in the afore-mentioned, or the like Caſes, it's abſolutely unlawful for private Subjects to take up Arms againſt each other; and as being altogether inconſiſtent with Society and Order, is under all higheſt Pains prohibited by the Emperours *Valentinian* and *Valens*. (a) And ſurely if a Man be greatly injured by his Fellow-ſubject, *right Reaſon*, as well as *Chriſtianity*, will teach him, not to run forthwith to Arms, but to repair to ſuch as are in Authority over them both, and there demand Reparation. Nay, even the Suſpenſion of Law (when a State is in ſuch a Confuſion, that there is no lawful Judicature to apply to) does no more qualify a private Perſon to be his own Revenger, than it

(a) *L. un. C. ut. Armor. Uſ. inſc.*

it inveſts him in any other Part of Authority; and he may with as good Right place himſelf on the Bench, and become a Judge in other Mens Cauſes, as thus become both Judge and Executioner in his own.

23. Far leſs is it conſiſtent with Society Order and Government, for a private Perſon to levy War upon any Account (except theſe now mentioned, or the like) againſt either a foreign Prince, State, or ſingle Party: (*a*) For after Societies were eſtabliſhed, there has been by a tacit univerſal Conſent among Men, a general Surceaſe of that originary Law of Nature, which allows even private Men to repel Force by Force; and whereof there yet remain ſome Veſtiges among the brute Creatures. And *Gellius* tells us, (*b*) That upon this Account it was that the *Rhodians* were abſolved by *Cato*: *Multos quidem*, ſays he, *Cives privatos, aſperas in* Romanos *habuiſſe Conciones, & ad Bellum ſuadendum omnes adhibuiſſe Facundiæ Vires: Nullum tamen de Bello* Romanis *inferendo factum eſſe Senatusconſultum, nullamque propterea iis interceſſiſſe cum* Romana *Republ. Inimicitiam.*

24. Yet it is not to be doubted but a private Perſon, by Permiſſion of the Government he owes Allegiance to, may levy and arm

(a) *D. l. un.* (b) *Lib. 7. Cap. 3.*

Forces, for obtaining Reparation of Injuries, or Reſtitution of what has been unjuſtly away taken by a foreign Prince or his Subjects, and may juſtly retake the Things or their Value: For to this End *Repriſals* were many Ages ſince introduced even among Chriſtian Princes. (Which nevertheleſs, by the by, are commonly the Prelude to a ſolemn War:) For in theſe, a violent Repetition is allowed, of ſuch Things as are unjuſtly detained by the Subjects of another Prince, after they have fairly been required back in a friendly Manner: (a) So that Reparation or Reſtitution being denied, the Foreigner's Goods are detained as a Kind of Pledge: For it's generally the Opinion of all Caſuiſts on this Head, That the whole Effects of a Nation ſtand bound for the Injuries done by any private Subject thereto belonging, providing always that the Delinquent being in their Power, they refuſe either to deliver him up to the Party injured, or to bring him themſelves to condign Puniſhment. (b)

25. Theſe *Repriſals* (which in barbarous *Latine* are called *Repreſſaliæ*; but more properly *Reprenſaliæ*, and in the *Greek*, ἐνεχυριασμοὶ) have probably been at firſt introduced, to prevent

(a) Gail. *Lib. de Pignorat. Obſerv.* 2. (b) Alberic. Gentil. *Lib.* 1. *Cap.* 21.

prevent a Nation's being involved in a publick War, for every trifling Wrong done by Foreigners to any private Subject: Yet becauſe it frequently falls out, That when ſuch Licence is granted, the Prince or State whoſe Subject the firſt Aggreſſor is, will be ready to defend him, and engage in the Quarrel, as judging their own Honour or Intereſt to be thereby mainly attack't; the Effect whereof is commonly a ſolemn War betwixt the two Nations; it is therefore generally enjoined by thoſe who write upon the *Politicks*, That Princes and States be very ſparing in granting ſuch Indulgences, upon ſlight Injuries done to their private Subjects, whereby the Publick is ſcarce at all wronged; leſt thereby they give Occaſion to a Rupture, which, for ought they know, may be ſucceeded by ſuch Miſchiefs, as far out-bid the firſt Injury; (*a*) but that all other Methods for Reparation, be firſt eſſayed, and as much Care and Circumſpection adhibit in the Matter, as if they were deliberating upon a publick War.

26. Yet ſtill it muſt be acknowledged, That *Repriſals* take not their Riſe from the *primitive* Law of Nature, it being generally ſpeaking, plainly contrary to natural Equity,

(a) Ajala. *de Jur. & Offic. Bell. Lib.* 1. *Cap.* 4. *Num.* 10.

that one Man's Perſon or Goods ſhould be detained for the Debt or Delinquency of another. Their Origine therefore is only to be aſcribed to the general Cuſtom of moſt Nations, which a Kind of Neceſſity, and the eviting of a greater Evil, hath introduced, or rather extorted.

27. From what hath been ſaid, we may ſafely infer, That theſe two Caveats ought neceſſarily to preceed the Grant of a *Repriſal*; 1. The expreſs Conſent of an independent Prince or State, whoſe Subject the injured Party is. And 2. That he have ſuffered a very conſiderable Detriment in his Perſon, Fortune, or Reputation, by the Subjects of a foreign Prince, who, tho' it was in his Power to reſtrain them, yet did it not, nor will afford common Juſtice to injured Strangers, for Reſtitution. For if neither of theſe be in a Prince's Power, where is his Fault?

28. *Secondly*, War is either *juſt* or *unjuſt*. The firſt of theſe is that, *which is undertaken upon juſt and weighty Cauſes, by an independent Prince, or free State, againſt another, who alſo is inveſted with ſupreme and independent Power.* And ſuch a War is irrefragably founded in that at leaſt, which we call the *Secondary* Law of Nations: (*a*) For after the neceſſary Diſtinction

(a) *L.* 5. *ff. de J. & J.*

Diſtinction of Dominion and Property were introduced, and the primitive Communion of all Things had ceaſed, it ſoon appeared, That as Men increaſed in Numbers, ſo did their Ambition and greedy Deſire of poſſeſſing what was another's Right; and hence it was, that not being content with their own, (which is the greateſt and ſecureſt Riches) they began to project the intercepting of that which was their Neighbours; which at length arrived to ſuch a Height, that truſting to their own Strength, they invaded the Lives, Liberties and Properties of others; whereof we have many Inſtances in holy Writ, and many more in profane, but moſt of all in our own daily Experience, which does fully beſpeak moſt part of Men, the true Off-ſpring of their firſt Parents, who find no Guſt in all the Fruits of *Paradiſe*, if any one be denied them; and ſtill look not on what they have, but what they want; and as it is obſerved of Finger-fed Lap-dogs, they reliſh not one Bit, for the vehement Expectation of another.

29. For Defence therefore of our Lives and Fortunes, and for repelling ſuch outragious Attempts, Men were naturally induced to join themſelves in greater Societies; and hence followed the neceſſary Evil, *War*. (a)

 30. But

(a) *L. 3, ff. de J. & J.*

30. But *Juſtice* and *Injuſtice* being ſo plainly oppoſite, that the one does neceſſarly exclude the other; hence we may ſafely infer, That no War can be juſt on both Sides: Yet it's not to be doubted, but ſuch probable Grounds may be alledged for each of the contending Parties, that it would be hard to determine on whoſe Side the Ballance hangs. But on the other Hand, tho' both can never be in the *Right*, yet in ſuch dubious Matters, it's very poſſible, and common Experience atteſts it, That both may be in the *Wrong*; juſt as we daily ſee it in the Caſe of ſingle Combatants: And as to ſolemn national Wars, we have a memorable Inſtance of it in holy Writ, 2 *Chron.* 25. 17. *& Seqq.* to which I refer the Reader.

31. It is here further to be remarked, That a Cauſe cannot ceaſe to be *juſt*, and become *unjuſt*, tho' the War be never ſo barbarouſly managed by thoſe who have Juſtice on their Side; for in that Caſe, tho' the Law of Nature allows even the Injurer to defend himſelf, who thenceforth ceaſes to be a wicked and injurious *Enemy*, and commences a lawful *Self-defender*; yet this alters not the Nature of the Cauſe.

32. But becauſe there are ſome Cauſes of War ſeriouſly contended to be juſt, which nevertheleſs, if weighed in the Ballance, I ſay not

not of the Sanctuary, but even of common Reaſon, will be found wanting; it will not be a Miſs to examine a few of them. And,

33. *Firſt*, A meer Deſire of Glory and greedy Purſuit of Fame in the World, (which hath indeed been the true Cauſe of many bloody Diſſentions) can never afford a juſt and lawful Cauſe of War: For tho' *a good Name be better than precious Ointment*, yet it muſt ſtill be underſtood to be acquired by juſt and honeſt Means; which this can with no Shadow of Reaſon be ſaid to be, whilſt a Man is hurried on to prefer a little popular Applauſe, both to the publick Welfare, and the Lives of as many as periſh in the Undertaking. And certainly he who to ſecure himſelf a Reputation, fired the Temple of *Epheſus*, may very well vey for the Juſtice of his Cauſe, with the greateſt of thoſe Knights Errants.

34. *Secondly*, Altho' the firſt Wars among Men probably took their Riſe and Spring from a Deſire to extend and enlarge their Territories, and thereby *heap up Wealth*; yet certainly ſuch a Deſire can nevet lay Claim to Juſtice, or make *that* warrantable, which nothing but meer *Neceſſity* or true *Charity* can legitimate. For were ſuch a Cauſe admitted as lawful and juſt, then certainly Pirates, publick Graſſators, *&c.* have full as good a Plea

a Plea for the Juſtice of their Cauſe, as the moſt ſucceſsful whole-ſale Robbers of them all; as was very juſtly objected to *Alexander* by the *Scythian* Ambaſſadors. (a) Beſides that (as has been already hinted) to the making a War juſt and honourable, it's neceſſarily required, That it be ſolemnly denounced, after Reparation has been demanded of Injuries done, or Reſtitution of what's unjuſtly detained. Now with what Face can a Prince or State demand Reſtitution of what he has no Right to, nor was ever his own? Certainly were this admitted as a juſtifiable Cauſe of War, all humane Society muſt neceſſarly diſſolve, which would bid fair towards the reducing us to that State of common Hoſtility, which ſome have fancied to be the original Condition of Mankind. Yet it's too nottour to need any Probation, that (what ever other Grounds have been pretended above Board) this has been the true Cauſe of moſt Part of the offenſive Wars, that have diſturbed Chriſtendom theſe hundred Years by paſt. For tho' *Ambition* and *Covetouſneſs* be generally *hated* and *decried*; yet they are as generally *imbraced* and cheriſhed; and tho' they have no *Advocates*, have many *Friends*. Would GOD the great Men of the World

(a) Curt. *Lib.* 7. *Cap.* 8.

World would at laſt be aſhamed to *be* what they are aſhamed to *own*.

35. *Thirdly*, There is another Pretext for making War, ſomewhat more *ſpecious* than any of the former, and that is the weakning and abating the Power of a neighbour Prince, which otherwiſe might in Time become formidable to all about him, and threatens an *univerſal Monarchy* : And this has been openly avowed as both the *juſt* and *real* Cauſe of ſome Wars that have been undertaken in our own Days, and in the ſolemn modiſh Stile, has been called the *keeping the Ballance of Europe*, and Confederacies on both Sides ſolemnly entred into upon that Acçount. But if we would weigh even this Cauſe in the Ballance of common Juſtice and right Reaſon, we ſhall find it as much *wanting* as any of the former. For tho' it muſt be owned, That when a Prince or State has a Cauſe for War that's irrefragably *good*, he may, in conſulting the *Expediency* of taking Arms, (for War is not always *expedient*, even when it's *juſt*) make Uſe of this as a Motive; yet if it be the *only* Cauſe, there is nothing leſs juſtifiable. For how can the bare Poſſibility of Suffering, give me juſt Ground to oppreſs? ſince ſuch has in all Ages been, and ever will be the Condition of humane Affairs, that no State nor private Perſon, was, or ever will be totally ſecured from Dangers: And therefore againſt

againſt ſuch uncertain Chimerical Fears, we are to fortifie our ſelves, not by Violence and Oppreſſion, but in the *Divine Providence*, and the Uſe of all innocent Precautions. For Inſtance, when we ſee a Neighbour Prince, whoſe Hands are nowiſe tied up by Treaty, either building new Forts and Gariſons upon his Frontiers, or adding to the Strength of ſuch as are already in being, this can certainly afford no juſt Cauſe for making War upon him, ſince he may do with and upon his own Territories what he pleaſes; and for obviating the fatal Effects of ſuch a Practice, his Neighbours may do the like within their own Bounds, and uſe what other lawful Remedies Reaſon and Conſcience do ſuggeſt; but to declare War only on this Account, can never lay Claim to Juſtice.

36. *Fourthly*, Many learned Men have been of Opinion, That ſo great is the Favour of *Self-defence*, that a *defenſive* War is lawful and juſt, even upon their Part, who by giving the firſt *Offence*, or doing the firſt *Wrong*, have juſtly drawn on themſelves the armed Forces of their Neighbours for Reparation or Reſtitution: And their Reaſon is, That however the firſt Offender is in the Wrong, and therefore in common Juſtice deſerves to ſuffer according to what he has done; yet when Reparation is ſought by armed Force, it's ſcarce poſſible that the Party offended, who is now become

become the Aggreſſor, will keep within the Bounds of Equity, and exact no further Reparation than is preciſely due; and ſo far indeed they are in the Right, publick Wars, like private Strifes, being (in *Solomon*'s Phraſe) *as the inletting of Waters*; nor want we Examples in Hiſtory of Wars that have been undertaken upon ſmall inconſiderable Accounts, which yet have terminated in the utter Exciſion of one of the contending Parties. But withall it is to be conſidered, That this Apprehenſion, however well founded, yet *at the firſt* can give no Right to the Offender, to make Uſe of even defenſive Arms, no more than a Criminal can warrantably reſiſt the Miniſters of publick Juſtice, upon Pretence that he fears his Puniſhment will exceed the Demerit of his Crime. But as in private Injuries, ſo here, the Delinquent is firſt to offer Reparation or Reſtitution, as ſhall be determined by Neutrals; and this being rejected, then, and not till then, his defenſive Arms become juſt and lawful. Thus we find *Hezekiah*, (a) after he had rebelled againſt the King of *Aſſyria*, and broken the Covenant which his Fathers had made, being on that Account invaded, he acknowledges his Fault, and ſubmits his Mulct to the Determination of

(a) 2 *Kings* 18. 7, 14.

of the *Aſſyrian* himſelf: But having paid the Contribution impoſed, and being even after that again invaded, (*a*) he betook himſelf to a juſt and neceſſary Defence, as truſting to the Equity of his Cauſe, and GOD accordingly bleſſed him with Succeſs.

37. *Fifthly*, Many alſo have maintained, That the *Propagation of Religion* and *Extirpation of Hereſie*, is not only a juſt Cauſe of War, but that in Order to the planting Chriſtianity in a Nation, the Soil may be mellowed with the Blood of the Inhabitants, nay the old extirpated, and new Colonies planted. In Order to which, ſome Caſuiſts in the laſt Age, tho' pretended Proteſtants, have made uſe of the Opinion of ſome *Popiſh* School-men, that *Dominion is founded in Grace*; but as that is but an Opinion, ſo were it admitted as the moſt certain Truth, it could never warrand any Interprize of this Kind. *For ſuppoſing a People by wanting ſpiritual Bleſſings, did loſe all their Right to the temporal, yet* (as is well obſerved by a learned and pious Writer of our neighbour Nation) *that Forfeiture muſt devolve only to the ſupreme Lord; and when as* GOD *in another Caſe asks, Where is the Bill of Divorce? (b) ſo we may demand of theſe zealous Invaders, Where is the Bill of Aſſignment, by which that Right*

(a) *Chap.* 19. (b) *Iſa.* 50. 1.

Right was transferred to them? In ſhort, *Peace* is the moſt valuable Bleſſing of humane Life, and we cannot without Injuſtice deprive Men of it, tho' we could, as we pretend, give them *Truth* in Lieu of it, for maugre the Proverb, that *Exchange* will ſtill be *Robbery*, where the Parties are compelled to make it. And if ſo, then certainly a defenſive War is moſt juſt and warrantable on their Part who are ſo groundleſly invaded, (a) ſince humane Society and Communion among Men is nowiſe diſturbed or evacuated by Hereſy alone; nor needs Difference in Religion either evacuate Contracts, or diſturb the publick Peace. And tho' it be granted, that by Hereſy and falſe Religion GOD is diſhonoured, his Laws violated, and War as it were denounced againſt Heaven; yet the Puniſhment of ſuch Delinquencies can never become the Right of any foreign Prince or State, but belongs only to their own Governours, (b) who tho' they themſelves be alſo infected, yet their Puniſhment is reſerved to GOD alone. Beſides, that this is certainly by far the wrong Way of evangelizing; ſince true Religion is both to be planted and watered, only by the Methods of the glorious Company of

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(a) Ajala. *de Jur. et Offic. Bell. lib.* 1. *Cap.* 2. *N.* 28. Bocer. *de Bell. Cap.* 4. *N.* 12. 13, 18. (b) *Arg. L.* 20. *ff. de Juriſdic.*

of Apoſtles, and noble Army of Martyrs *(a)*: And if they who refuſe *to hear Moſes and the Prophets*, will not be perſwaded tho' *one roſe from the Dead (b)*; far leſs will they be converted by ſuch *reverſed Evangeliſts*,, whoſe firſt Addreſs is in Blood and Rapine.

38. In ſhort, we have but too much Ground to preſume, that ſuch Mens great Pretence to *Godlineſs*, is but a real Purſuit of *Gain*, and a Clock for Avarice and Ambition. *(c)* And accordingly if we examine the Attempts of this Kind, that have been made within theſe 200 Years; 'twill be obvious, the main Deſign was to ſubject Heathens to themſelves. 'Twas not ſo much their *Heatheniſm* as their *Territories* they invaded, and ſuch *Apoſtles* as theſe are ill qualified to make the Apoſtle *Paul*'s Profeſſion, *(d) I ſeek not yours, but you.* But we need neither to travel ſo far beyond Sea, nor ravel ſo far back into former Ages; this *Iſland* having afforded both *freſher* and more *pregnant* Inſtances of a Set of Men, whoſe *new Light* ſerved only to guide them to their Neighbour's Coffers; who when remorſleſly ſhedding the Blood of their Brethren, did yet call

(a) Theod. Gras Winkel *de prelud. Inſtit. et Jur. Queſt.* 4. *Sect.* 4. (b) *Luke* 16. *ult.* (c) Alberic. Gentil. *de Jur. Bell. lib.* 1. *Cap.* 9. (d) 1 *Cor.* 12. 14.

call all this *the helping the Lord againſt the Mighty.*

39. But this is a Theme I delight not to enlarge on, and therefore ſhall only ſubjoin this Caveat, that what is here ſaid of the *military Sword*, is in no Caſe to be applied to the *civil*, *viz.* ſuch legal Puniſhments as are inflicted by Magiſtrates on their diſobedient Subjects; ſince Rulers *may juſtly*, nay indeed *muſt neceſſarly* require Conformity to *eccleſiaſtical* Laws, as well as the *civil*, and are obliged by their Stations to approve themſelves *Avengers to execute Wrath*, no leſs here than in other Circumſtances.

40. *Sixthly*, Some alſo with great Aſſurance have pretended to maintain the Juſtice of their Cauſe, from *the Succeſs of the War*; but this of all others is the moſt abſurd and wicked Plea, GOD having certainly deſigned us another Meaſure of our Undertakings, his Word and Law, by the general Proportions whereof, we are to ſquare and accommodate our particular Actions; but ſends us not to the various Diſtributions of his *Providence*, nor allows us to pronounce of the *Juſtice* from the *Succeſs* of our Actions: For were *that* the Trial, no Attempt whatſoever could at all be lawful, ſince that which ſhould make it ſo, is *ſubſequent* to it, and therefore can have no *Influence* on the making it good or bad.

41. *Seventhly*,

41. *Seventhly*, Neither is the *Deſire of Liberty* whether *perſonal* or *civil* (if we have been juſtly enſlaved) a ſufficient Ground for taking up Arms: For tho' it's commonly ſaid, That by Nature all Men are free born, yet that is only to be underſtood of the primitive Law of Nature, which preceeded all humane Pactions; and tho' it were granted that no Man is born a Slave, yet can it not be ſaid, That any Man is born with a Privilege never to become one, no Man in that Senſe being free born.

42. *Eighthly*, Neither can we juſtly invade our Neighbours, upon a meer Deſire of *changing our Place of Abode*, (tho' in a Wilderneſs or Mariſh) that ſo we may acquire a more fruitful Soil, which according to *Ceſar* and *Tacitus*, was the only Cauſe of the Eruptions made by the ancient *Helvetii* and *German* Nations.

43. *Ninthly*, When Women may otherwiſe be had, the Refuſal to join in Affinity by Marriage, affords no juſt Ground for an offenſive War. Yet of ſuch Quarrels ancient Hiſtory gives us ſome Inſtances, ſuch as that of *Hercules* againſt *Eurytas*, *Darius* againſt the *Scythians*, and *Antoninus Caracallu* againſt *Artaban* the *Parthian* King.

44. *Tenthly*, Some Writers of the middle Ages have ſeriouſly contended, That the *Roman* Emperors have a general Cauſe for making

king War upon all the World, as having Right to an universal Monarchy; insomuch that *Bartolus* adjudges them all Hereticks who deny the Position: Nay, others (especially *German* Authors) have thought fit to extend the Claim to the present Emperors of *Germany* as being the true Successors of those of *Rome*. And for this they alledge some Texts in the *Roman* Law, (a) and some Passages in classical Authors, where the Emperors stile themselves Lords Paramount of all the World, (altho', by the Way, the *Roman* Empire at its meridian Height, did not extend it self to the sixth Part of even the then known World) nay Scripture has been adduced to make good this Plea, such as *Luke* 2. 1. where the *Roman* Empire is called *all the World*. The first of these deserves no Answer, and as to the Scripture Text, the Word πᾶσαν τὴν οἰκουμένην there used, is frequently in Scripture made use of to signify only the Land of *Judea*; and the inspired Penmen, in this, as in many other Instances, accommodate themselves to the Way of speaking that was then commonly used.

45. *Eleventhly*, In the last Place, some also have ascribed an universal Jurisdiction to the *Church*, extending over even the remotest and unknown Nations, which many of the *Romish*

(a) *As L. 9. ff. ad Leg. Rhod. de Jact.*

Doctors have lodged in *his Holineſs*, who accordingly, about 200 Years ago, made a ſolemn Donation of *America* in Favours of the Kings of *Spain*, and of the *Eaſt Indies* to thoſe of *Portugal*, ordaining them without any Offence given, to make War upon, and ſubdue thoſe Nations. But indeed this one Poſition of the *Pope*'s Right to diſpoſe on Kingdoms, outſtrips all other Principles of Rapine: This is to drive a whole Sale Trade, when all other petty Merchants deal but for Parcels, which as it is a much bolder, ſo is it a more prejudicial Attempt, than the invading of private Poſſeſſions. But ſure neither he, no nor the whole *Church* or a *general Council*, can have any Foundation for ſo wild a Claim: We find the Apoſtle *Paul* expreſly diſclaiming it, *(a) what have I*, ſays he, *to do to judge them that are without.* And tho' the Apoſtles had indeed *Weapons of their Warfare*, yet we are told that theſe were *ſpiritual*, and not *carnal*.

46. Theſe are a few of the *real*, tho' not *juſt* Cauſes of making War, which how ridiculous ſoever, yet have not wanted in all Ages, Patrons to defend them. But beſides thoſe that are plainly unwarrantable, there may be others which are *dubious* and *diſputeable*; in which Caſe,

(a) 1 Cor. 5. 12.

Caſe, the ſafer Part is undoubtedly to be choſon, and conſequently War to be forborn.

47. Further yet, upon this Head we are to notice, That Cauſes of War, generally ſpeaking, are either ſuch as are *juſtifying*, or they are purely *political* (under which File may be ranked moſt of the Cauſes aforementioned) when War is undertaken only for *Reaſons of State*. Theſe laſt are none of my preſent Subject; only by the Way we may remark, that the juſtifying Cauſes are for the moſt Part like the Hand of a Clock, ſet more *conſpicuous*, but intirely regulated by the *unſeen* Wheels within; and as theſe are termed *juſtifying* Cauſes, ſo the other are by *Grotius* called *ſuaſory* ones. *Polybius* alſo terms the firſt προφασις, (and *Livy*, *Titles*) becauſe they are openly profeſſed and avowed, and the other by the general Name of αιτιαι. The firſt alſo in *Sueton*, are termed *Pretexts*; and the other, *Cauſes*. Thus *Alexander*'s Pretext for invading *Darius*, was the Inſults of the *Perſians* over the *Greeks*; but the *true Cauſe* was his greedy thirſting after Power and Wealth. Thus alſo, the προφασις of the ſecond *Punick* War, was the Difference about *Saguntum*, but the *real Cauſe* was the Indignation of the *Carthaginians*, that in their low Condition, they had been driven to an ignoble and diſhonourable Peace with the *Romans*.

48. But as to the *juſtifying Cauſes*, they indeed may be innumerable, and as many as

there are Grounds of civil Actions, becauſe when that ſober Method of ſeeking Redreſs, proves ineffectual, War then becomes the laſt Refuge. But learned Authors do commonly reduce the *juſt Cauſes* of War to theſe three Claſſes. *Firſt*, A War is undoubtedly warrantable for *lawful Self-defence*. *Secondly*, When Arms are taken, for *Repetition* of Things injuriouſly abſtracted, and violently and unjuſtly detained. *Thirdly*, For *avenging Injuries* done to the Innocent: And with a great Meaſure of Certainty it may be ſaid, That no Cauſe can be called good, except reducible to one of theſe three. Yet even here it would be remembred, that Force of Arms is always to be *Ratio ultima Regum*, which Words were upon that Account, by *Henry* IV of *France*, cauſed to be engraven upon his great Guns: And certainly it's neither ſafe, nor ſo much as juſt, to run to Arms for every trifling Offence. Nay, what deſperate Folly is it to make a whole Nation run the Risk of utter Exciſion, perhaps to gratify a Prince's own unruly Paſſion? In ſhort, there is nothing under the Sun ſo uncertain as the Event of War, yea even of a ſingle Battel, where the moſt inconſiderable Accidents have often turned the Scales of Victory, and made the Powerfuleſt Armies meet with a Repulſe, where they expected only to triumph.

49. The moſt remarkable Inſtance of the laſt of theſe three Cauſes of War, is Violence offered

offered to *Ambaſſadors*; for ſince they repreſent the Prince or State by whom they are ſent, their Perſons and Goods have ever been looked upon as ſacred and inviolable, even among the moſt barbarous Nations. *(a)* And hence it is, That *Tacitus* tells us, *(b)* When *Germanicus* was chiding the Mutineers, he mainly lays this to their Charge, *Sacra Legationis et Jus Gentium rupiſſe.* In ſhort, whatever Affronts or Indignities are put upon *Ambaſſadors*, are very juſtly underſtood to be done to the Prince or State whom they repreſent: And therefore, if Arms be lawful for obtaining Redreſs of Injuries done to a Prince himſelf, (as undoubtedly they are) the ſame alſo takes Place, when his Ambaſſadors are injured. And therefore, for eviting all Occaſion of Rupture upon this Account, it is ſagely injoined by the *Roman* Lawgivers, *(c)* That whoſoever offers Violence to a Perſon ſo ſacred, be delivered up to the Prince or State whom he hath violated in the Perſon of their Ambaſſadors, which accordingly, as we read in *Roman* Story, was frequently done; and this, leſt the Government ſhould ſeem to approve the Inhumanity of their private Subjects.

(a) *L.* 8. *ff. de Rer. Div.* (b) *Lib.* 1. *Cap.* 42. (c) Pomponius *in L. Fin. ff. de Legation.*

50. We have one Example in ſacred Hiſtory, but Multitudes in civil Records, of laſting and bloody Wars, which have taken their Riſe, from barbarous Treatment of *Ambaſſadors*. Thus when *David* had ſent an Embaſſy of Condolence to *Hanun* King of the Children of *Ammon*, who inhumanely and barbarouſly uſed them, (*a*) the War that inſued upon that Account, was, we find, managed with unuſual Rigour. And *Juſtin* tells us, (*b*) That a terrible Army was raiſed againſt the *Macedonians* by *Megabaſus*, for killing his *Ambaſſadors*; and the ſhameful Indignity put upon the *Roman* Ambaſſadors at *Tarentum*, gave Riſe, according to *Florus*, (*c*) to the firſt War againſt that People. So alſo, upon the ſame Account, a bloody Battel was fought betwixt the *Romans* and the *Fidenates*, according to *Diodorus Siculus* (*d*). And *Florus* tells us, That for the Slaughter of Ambaſſadors, the *Romans* firſt made War upon the *Illyrians*, which was carried on with utmoſt Cruelty. (*e*) Laſtly, The moſt notable Inſtance of this was, when the *Tyrians* threw *Alexander*'s Ambaſſadors over a Precipice, which ſo raiſed the Spleen of that great Prince, (tho' otherwiſe of a very gentle Spirit and clement Deportment) that he would never give over

(a) 2 *Sam.* 10. (b) *Lib.* 7. *Cap.* 3. (c) *Lib.* 1. *Cap.* 18. (d) *Hiſt. Lib.* 12. (e) Florus *Lib.* 2. *Cap.* 5.

over the Siege of that Place, till it lay buried in its own Rubbiſh, and had become both Funeral, Pyle and Urn to it ſelf; moſt of the Citizens being alſo put to the Sword, and 2000 who only remained and had eſcaped its Rage, were crucified upon the Sea Shore (*a*).

51. This Reſpect to the Perſons of Ambaſſadors, was ſo great among the ancient *Romans*, that by their Law, (*b*) tho' private Perſons found within the *Roman* Territories, when a War broke out with the Country they belonged to, immediately became Slaves, yet the Perſons of Ambaſſadors were always excepted, and they allowed to return Home in Honour, Freedom and Safety: Which Cuſtom is indeed not only founded on *Juſtice*, but even common *Utility* and *Neceſſity*; ſince without it, neither Peace, nor Ceſſations of Arms, Leagues, *&c.* could at all be accompliſhed. A memorable Inſtance of this *Livy* affords us, (*c*) in the Caſe of the *Tarquines*, who, after their Expulſion, having returned as Ambaſſadors, and under that Covert, beginning to tamper with the young Nobility about reſtoring the Monarchy, tho', upon Diſcovery of ſuch a Practice, they might juſtly been treated as Enemies or Spies, *yet the Law of Nations* (ſays *Livy*) *prevailed.*

Yet

(a) Curt. *Lib.* 4. *Cap.* 2, 3, 4. (b) *L. ult. ff. de Legation.* (c) *Lib.* 2.

Yet by the Way, this Inſtance can never ſecure an Ambaſſador, who forgetting his proper Work, falls a plotting againſt the Prince or State he is ſent to; ſince whenever he begins to act without the Verge of his Office, he is, as to that, to be looked upon only as a private Perſon.

52. Further yet, it's to be remembred, That thoſe great Privileges the Law of Nations affords to Ambaſſadors, can nowiſe be acclaimed by ſuch as are ſent from Robbers, Graſſators, Pirates, Rebels, *&c.* thoſe who ſent them, not being properly Enemies, (tho' with Juſtice they may be treated as ſuch) ſeing a Rebel can no more withdraw his Allegiance due to his Sovereign, than that Famous *Roman* Slave *Barbarius Philippus*, could without his Maſter's Knowledge enfranchize himſelf (a). And hence it is, that learned Writers on this Subject do commonly ſay, *That it's below the Majeſty of a Prince to treat with, far more to ſend Embaſſies to Rebels, or receive any from them.* Nay, it's pretty remarkable, that GOD himſelf doth ſo much deteſt and abhor all Traitors and Schiſmaticks, that we read of his forbidding the Prophet, who came with a dreadful Meſſage to *Jeroboam* (who to a Deſection from his Prince, had added, as is uſual, another

(a) *L.* 3. *ff. de Offic. Pret.*

another from his GOD) to eat or drink there, and tho' his Diſobedience was attended with a very extenuating Circumſtance, yet on that Account, inflicted a Puniſhment on him as rare and unuſual, as it was ſharp and ſevere. *(a)* Beſides, that a Prince his treating as upon a Level with his rebellious Subjects, hath very rarely turned to a good Account, whereof we want not freſh and coſtly Inſtances in this Iſland: For King *Charles* I. his treating in that Manner with his rebellious Parliaments in both Nations, ſerved only to make the Breach irrepairable, and to prove a Handle to thoſe deſigning Men, to debauch the few about him, who till then had kept their Integrity. Which melancholly Example prevailed not with his Son ſome Years thereafter, to forbear treating in the ſame Manner with the *Scots* Commiſſioners at *Breda*.

53. Yet at ſome Times, Neceſſity that great Law-breaker, hath alſo conſtrained other Princes, to diſpenſe with this Punctilio: Which has often fallen out when a People was ſo divided, that 'twas no leſs hard to tell which Party was moſt numerous, than which had the juſteſt Right. For in ſuch a Caſe one Nation, in ſome Reſpect becomes two.

54. The

(a) 1 *Kings* 13.

54. The moſt remarkable Privileges that by the Law of Nations, ſeem to belong to Ambaſſadors as ſuch, Are 1*ſt*, That they be admitted. 2*dly*, That no Violence be done to them.

55. As to the firſt of theſe, tho' the Law of Nations does not indeed poſitively injoin, that all Ambaſſadors be promiſcuouſly admitted, yet it prohibits the rejecting of any without a juſt Cauſe: And this may proceed either, 1*ſt*, From the Perſon that ſends the Embaſſy, as when an avowed Foe having an Army in the Field, obtrudes Ambaſſadors upon his Enemy. Or, *Secondly*, From the Perſon who is ſent, if, for Inſtance, his Character in the World be ſuch, as a Prince or State cannot in Honour treat with him. Or, *Thirdly*, Ambaſſadors may be refuſed Admittance, becauſe of the Subject Matter of their Meſſage, ſuch as if there be ſhrewd Preſumptions that they come as Spies, or to debauch a People from their Allegiance, which was *Rabſhakeh* his only Errand to *Jeruſalem* (a).

56. But as to the other Privilege, the Cuſtom of moſt Nations (as I have already hinted) has generally made their Perſons ſacred and inviolable upon whatſoever Account; ſo that all a Prince or State can do againſt them, is

(a) 2 *Kings* 18. 17.

is in Caſe of ſmaller Affronts or Injuries, to command them out of their Territories; and in Caſe of greater, to demand alſo of the Prince that ſent them, whether what is done, be by his Command, Permiſſion, *&c.* Indeed an Ambaſſador uſing open Hoſtility, may be killed, and otherwiſe treated as an Enemy, without any Infringement to the Law of Nations, but that is not at all by Way of Puniſhment, but purely upon the common Principle of *Self-defence.*

57. *Laſtly*, What has been ſaid with Reſpect to the Perſons of Ambaſſadors, is very juſtly extended to their Retinue and Goods. But to allow them criminal Juriſdiction within their own Families, or their Houſes to be Sanctuaries, *&c.* (as in ſome Courts is uſual) is nowiſe the expreſs Dictate of the Law of Nations, but wholly depends upon the Will or Cuſtom of that Court where they reſide.

58. I ſhall only further remark upon this Head, That the main Qualifications commonly required in an Ambaſſador, are *Prudence* and *Birth*; ſome Authors do alſo add a moroſe and rigid *Severity* in his Deportment; but this has been long ſince obſerved to have done much more Miſchief, than ever it brought Advantage; only in that known Inſtance of the *Roman* Ambaſſador *Popilius*, who drew a Circle about King *Antiochus*, it was attended with notable Succeſs. But I return.

59. With

59. With Reſpect then to War in General. I ſhall yet further remark, That however juſt and pious the Cauſe was, yet if once a Peace inſue, or the Ground of the Quarrel be amicably removed, and quite extinguiſhed without the Intervention of *Garments rolled in Blood*, neither Party is thenceforth at Liberty to renew the War upon the old Score. But here there is a Queſtion that hath much exerciſed the Pens of learned Men, *viz.* If a Prince or People be plainly induced by Fraud, Lying, and Circumvention, to enter into a League or Confederacy, how far they are thereby bound? and whether upon Diſcovery of the Deceit, they may upon the former Grounds (which are ſuppoſed to be juſt) renew the War upon the Deceivers, as if no Paction had interveened? That which gives Occaſion to the Queſtion, is the remarkable Paſſage in *Joſhua* 9. compared with 2 *Sam.* 21. touching *Joſhua* his League with the *Gibeonites*; which I hope may be ſet in a pretty clear Light, by the following plain and irrefragable Poſitions.

60. *Firſt*, To all Contracts in General, *Conſent* is abſolutely and eſſentially neceſſary. *Secondly*, *Fraud* interveening, plainly excludes all *Conſent*, ſince in that Caſe there is not *duorum in idem Placitum & Conſenſus*: (a) And

(a) *L.* 2. §. 2. *ff. de Pact. L.* 3. *ff. de Pollicit.*

And this is ſo uncontroverted in Law, that all Contracts Tranſactions, *&c.* to which Fraud gives Riſe, are either ſimply null from the Beginning, or at leaſt (which is almoſt the ſame Thing upon the Matter) may be reverſed, and reſcinded by the Sentence of a Judge, by Way either of Action or Exception. (*a*) And hence it naturally follows, *Thirdly*, That even a ſolemn *promiſſory Oath*, if elicit by *Fraud*, is ſimply null. (*b*) Therefore, *Fourthly*, We may ſafely conclude, that in the preſent Caſe, notwithſtanding the Covenant and Oath thereto ſubjoined, *Joſhua* was at Liberty ſtill to look upon the *Gibeonites* as Enemies devoted to utter Extermination, and with perfect Juſtice might have treated them as ſuch.

61. And indeed, if we take a ſerious View of that Tranſaction as recorded in *Joſhua* 9. it will be pretty eaſie to diſcern, that even *Joſhua* did not in all Points obſerve and perform the ſworn Engagements, to which he was fraudulently induced. For, *Firſt*, Such an Oath is undoubtedly to be explained, from what probably was the Mind and Intention of him who emitted it. From which it follows, *Secondly*, That

(a) *L.* 7. *ff. de Dol. l.* 16. §. 1. *ff. de Minor. l.* 3. §. *fin. ff. pro. Soc. l.* 36. *ff. de Verb. Oblig.* (b) Zoes. *ad Tit. ff. de Jurejur. N.* 73.

That it is ſcarce probable that the *Iſraelites*, in making Covenant with the *Gibeonites*, would, without any Ground or the leaſt Speciality in their Caſe, made the Bargain ſo unequal, as to condemn them to the perpetual Drudgery of hewing Wood and drawing Water; but would rather have treated them according to the Rule preſcribed touching *all the Cities that were very far from them*, (of which Number they were induced to believe the *Gibeonites* were) by making them only Tributaries. Therefore it follows, *Thirdly*, That by impoſing ſuch hard Conditions upon them, they receded ſomewhat from their firſt Oath, as a Puniſhment of the *Gibeonites* Fraud, who had thus ſurrendered themſelves. *(a)*

61. Yet ſome modern Writers there are, who maintain, that *Joſhua* in this Affair, was preciſely bound to perform the Oath and Promiſe in the exact Terms thereof; and for this they object that notable Victory, wherewith GOD bleſſed him, when immediately thereafter he fought againſt the confederate Kings, in Defence of the *Gibeonites*. But from thence it can never be inferred, That his Covenant with theſe *Gibeonites* was either *juſt* or

(a) Alberic. Gentil. *de Jur. Bell. Lib.* 2. *Cap.* 5. *& Lib.* 5. *Cap.* 19.

or *binding*, or that GOD helped him to atchieve that Victory for their Sakes; for the Reaſon of that and all his other Victories, was undoubtedly the ancient Promiſe to *Abraham*, of giving all that Land to his Poſterity.

62. And tho' it be objected by ſome, That *Saul* his Breach of this Covenant many Years thereafter, was ſeverely puniſhed by three Years Famine, and the ignominious Death of ſeven of his Sons; yet here we are to notice, That after *Joſhua* had diſcovered the Deceit, he, by a reiterated Conſent, renewed the Compact, and thereto adjected the ſevere Clauſe of *hewing Wood and drawing Water*, which was not mentioned in the former Agreement. (*a*) And in this ſecond Agreement, there interveened no Fraud, (ſince he could not be ſaid to be deceived, after he knew the Condition of the Perſons with whom he contracted) and therefore, this renewed Covenant being juſt and lawful, *Saul* was as juſtly puniſhed for the Breach of it; but not for infringing the firſt, which in it ſelf was irrefragably void and null: For tho' we read in the Text, (*b*) that the Princes ſaid, *We have ſworn unto them by the LORD GOD of* Iſrael: *Now therefore we may not touch them*; yet in ſuch a Conſternation wherein the

(a) Joſhua 9. 33, 35. (b) *Ver.* 19.

the Mutiny of the People had caſt them, it was no ſtrange Thing to hear them utter theſe Words, with the ſame Inconſideration, and not asking Counſel of GOD, as they had raſhly, and without conſulting the divine Oracle, entred upon the firſt Agreement.

63. There is another Argument mainly inſiſted on by *Grotius*, (*a*) for the Juſtice and binding Force even of *Joſhua*'s firſt Covenant, *viz.* That altho' the People had not been deceived, yet they would undoubtedly, upon the *Gibeonites* ſurrendering themſelves, ſuffered them to live, and only made them Tributaries; becauſe GOD's devoting the *Canaanites* to Deſtruction, was only to take Place, in Caſe upon the firſt Offer of Mercy, they refuſed to ſurrender: For ſo we find it expreſly injoined, *Deut.* 20. 10. *When thou comeſt nigh unto a City, to fight againſt it, then proclaim Peace unto it. And it ſhall be, if it make thee Anſwer of Peace, and open unto thee, then it ſhall be, that all the People that is found therein, ſhall be Tributaries unto thee*, &c. But, *Incivile eſt niſi tota Lege perſpecta, una aliqua Particula ejus propoſita, judicare vel reſpondere.* (*b*) For the Text ſpeaks not at all of thoſe ſeven devoted and accurſed Nations, the Rules there ſet

(a) *Lib.* 2. *de Jur. Bell. ac Pac. Cap.* 13. *N.* 4. (b) *L.* 24. *ff. de Legib.*

ſet down being only calculated for ſuch Nations as dwelt very *far off from them*; for it's expreſly injoined, *Verſe* 15. *Thus ſhalt thou do unto all the Cities*, &c. But then in *Verſe* 16. follow the Inſtructions concerning the devoted Nations, *But of the Cities of theſe People, which the* LORD *thy* GOD *doth give thee for an Inheritance* (among whom the *Gibeonites* were, as is manifeſt from *Verſe* 16. compared with *Joſhua* 11. 19.) *thou ſhalt ſave alive nothing that breatheth*, &c. Whereby the Caſe of theſe Nations is plainly diſtinguiſhed from all other People, upon whom the *Iſraelites* were to make War. Beſides, that GOD in very expreſs and peremptory Terms, prohibits his People, *(a) to make any Covenant with theſe ſeven Nations, or with their Gods*; of which ſevere Interdict the People were not unmindful in the preſent Caſe; for (ſay they, *Verſe* 7.) *Peradventure ye dwell among us*, &c.

64. Further yet, it's fit to obſerve, with reſpect to the Lawfulneſs of War, That when a Prince takes Arms, it is in General to be preſumed, at leaſt by his own Subjects, that the Cauſes moving him thereto are *juſt* and *good*. Yet if he be ſo palpably injurious, that not the leaſt Colour or Pretext can be alledged

(a) Exod. 23. 32.

for him, it were hard in ſuch a Caſe to ſay, That Subjects are bound to aſſiſt him in ſo wicked an Undertaking: (a) Since neither the Force of Law, nor Paction, nay nor Promiſe tho' confirmed by a ſolemn Oath, can bind us to *obey Man rather than GOD.* (b)

65. But the Cauſe being ſuppoſed good, then certainly not only is *open Force* warrantable, but *Cunning* and *Addreſs*, (which we call *Stratagem*) is both *lawful* and *commendable*; nay, by far preferable to the ſanguinary Method. This in the common Law is named *Dolus bonus*, (c) and by *Tacitus* is ſimply termed *Dolus*; (d) *non auſis*, ſays he, *Aciem Hoſtibus, vel ſi ex occulto Agmen carpere tentarent, punito Dolo.* That this ſagacious Method of preſerving our ſelves, and eviting the Enemies Force, and catching an Advantage which his Neglect puts in our Hand, is even in Point of Conſcience juſt and warrantable, is plainly aſſerted by *Auguſtine*, (e) *Cum Bellum ſuſceperis*, ſays he, *utrum aperta pugna, an inſidiis vincas, nihil ad Juſtitiam intereſt.* And long before it was his Rule, we find it the Practice of the People of GOD, in the Siege of *Ai*, (f) and in the War againſt the

(a) *Arg. l.* 27. §. 1. *ff. de Action. Rer. amot.* (b) Roſenth. *de Feud. Cap.* 8. *Concl.* 20. (c) *L.* 1. §. 3. *ff. de Dolo.* (d) *Annal. L.* 12. *C.* 32. (e) *Cauſ.* 23. *Quæſt.* 2 (f) Joſhua 8. 3. *& ſeqq.*

the *Benjamites.* (a) And that in ſuch warrantable Frauds doth conſiſt a great Part of a Commander's Skill, the frequent Succeſſes of ſuch Attempts will atteſt. For tho' it has by many, eſpecially in elder Times, been held an *ignoble* and *unmanly Victory*, that was atchieved by Cunning and Stratagem; yet certainly that is a Fancy without all Ground: For when by thoſe ſober Methods a City is reduced, or an Army defeat, the Effuſion of Blood is commonly in a great Meaſure prevented; which as it is very conſonant to that general Cognation that is among *Men*; ſo, much more to the yet ſtraiter Tie among *Chriſtians.* Beſides, that thereby we ſecure the Lives, Limbs and Liberties of our ſelves and our Aſſociates, who by ſuch bloodleſs Hoſtilities, are rendred ſafe from the furious Inſults of the Enemy. So that by the riſking of a few, we prevent the expoſing of a whole Army, and often atchieve a glorious, tho an unbloody Victory.

66. Moreover, by this Means much Time is ſaved, whilſt frequently a Deſign may be compaſſed in one Night, which otherwiſe could ſcarce be brought about in many Months. *Laſtly*, by the Uſe of Stratagems, the publick Money is in a great Meaſure ſaved,

(a) Judges 20. 29. & ſeqq.

when for a ſmall Encouragement given to a few reſolute Men, the State may often accompliſh a Deſign, which otherwiſe might have coſt an immenſe Treaſure.

67. In ſhort, by how much the Performances of the *Mind*, as being more noble and illuſtrious, are preferable to thoſe of the *Body*, ſo much is *Stratagem* to be preferred to *open Force*: For when by Cunning and Addreſs we break the Power of an Enemy, we thereby ſhow our ſelves Men, in imploying all that's Man, and not Beaſt about us, in the War; whereas by the ſanguinary *Sword in Hand* Method, we appear liker to the ſturdier Kind of Animals, who truſting meerly to their own Strength, ruſh headlong upon one another's Ruin.

68. And what is thus ſo reaſonable in our Days, was, no Doubt, as commendable ſo many hundred Years ago. Accordingly we find the ſobereſt and moſt ſagacious among the Ancients, had the ſame Sentiments in this Affair. Thus the *Spartans* had an Order, That when any of their Generals had compaſſed his Deſign by *Policy* or *Treaty*, he ſhould ſacrifice an *Ox*; but when by *Force* and *Bloodſhed*, a *Cock* only: From the diſtant Values of which Oblations, *Plutarch* obſerves how much they preferred the Atchievements of calm and ſober Counſels, before thoſe of Strength and Power.

69. But

69. But beſide thoſe lawful and warrantable Artifices, there is a Fraud of a blacker Kind, too frequently tried; which the *Latines* in civil Cauſes call *Dolus malus*, and in Matters of War is always conjoined with Violation of ſolemn Pactions, Covenants, Oaths, *&c.* This nevertheleſs is openly and avowedly defended by *Machiavel*, as warrantable not only in War, but even in a Prince his common Management of civil Affairs with his Neighbours or Subjects. And that it has been many Mens Practice before it was his Rule, appears from Hiſtories of all Ages. Of this we have a notable Inſtance in *Cleomenes*, who when he had agreed upon a Ceſſation of Arms for ſeven Days, on the third Night thereafter, the Enemy being ſecure upon the Faith of the Truce, he attacks and defeats them: And the Ceſſation being objected to him, told, *That he had agreed for Days, but not for Nights.* Another Inſtance of the like Treachery, tho' not ſo finely ſpun, we have in *Don Lowis Requeſens*, a *Spaniſh* General, who having by a Detachment, cut in Pieces a Party of the *Moors* at *Granada*, that had reſted ſecure upon a Ceſſation of Arms; on Complaint of the Breach of Truce, he as knowing nothing of what had fallen out, cauſed put to Death the Commanders of the Detachment: Thus reducing to Practice *Catelines* Maxim of Villany, *That old Crimes are only to be wiped off by*

more and greater. This Inſtance however, may be a ſufficient Caveat for inferiour Officers, never to undertake any Thing of Moment, upon a General's bare verbal Order. But were Inſtances of this Kind as needful, as they are numerous, it were eaſie to give Multitudes; but I think none that lived in the laſt Age, can have forgot that ſtrange Practice of a great General, who attackt and fought the Enemy, after the Peace was concluded and ſolemnly proclaimed in the Enemies Camp, but not in his own; yet the Articles thereof were in his Pocket, and the Peace accordingly proclaimed even in *his* Army the next Day after the Battel, where there fell 13000 Men; but who was chargeable with all that Blood, is pretty eaſie to divine.

70. Yet certainly all Nations, whether civilized or not, have generally deteſted and abominated ſuch Practices: (a) For beſides the Ignobleneſs and Impiety of the Action, (b) there is nothing more deſtructive to humane Society, ſince thereby all Faith and Truth among Men is plainly evacuated, and Commerce of all Kinds rendred ſo dangerous, that were this generally allowed and unpuniſhed, Men may come to think it ſafer to truſt their

(a) Bocer. *de Bello. Cap.* 13. *N.* 18. *ibiq. citat.* (b) *Vid. l.* 1. *ff. de Conſtit. Pecun. l.* 29. *C. de Pact.*

their own Strengths, than to the Shelter of even the ſtrongeſt Compacts, which they ſee ſo avowedly broken thorow. And upon this Account, tho' the Injury be immediately done to private Perſons or ſmaller Communities, it becomes a publick Miſchief to all the World.

71. This then being irrefragably evident, That no Fraud (under whatever ſpecious Denomination) is at all tolerable, it remains to be examined, how far a Prince or General Perſon may uſe the Help of a *Traitor* or *Renegado*? and there want not ſome Caſuiſts (perhaps more *nice* than *wiſe*) who abſolutely reſolve the Queſtion in the *Negative*, and that becauſe, here there is a plain Breach of Faith and Truſt, which as it's reprobated by the Law of GOD, and all Nations; ſo no good Man will by any Means be acceſſory thereto, or give the leaſt Encouragement to it. And for this they inſtance the generous Example of the noble *Camillus*, who when beſieging a Town of the *Faliſci*, ſent back a Schoolmaſter with the Children of the Nobility, whom he had brought out with him to the *Roman* Camp, with this brave Expreſſion, moſt worthy indeed of Imitation, *Eos tu, quantum in te fuit, novo Scelere viciſti; ego* Romanis *Artibus, Virtute, Opere, Armis ſicuti Veios vincam.* (a)

72. But

(a) Livy. *lib.* 5.

72. But in this Caſe, *Grotius* his Diſtinction ſeems beſt to quadrate both with Juſtice and Prudence, *(a) viz.* That we are to make a Difference betwixt a General his *debauching* and *inticing* a Subject or Soldier to betray his Maſter; and the *voluntary Offer* made by a Traitor, without being previouſly practiſed upon. The firſt of theſe can never be warrantably nor honourably done, it being the ſame Degree of Guilt, if not a greater, to inſtigate a Man to a wicked Action, as to commit it our ſelves. But when without any previous Sollicitation of ours, an Advantage by the Means of a Traitor, is, in a Manner, thrown upon us, it can neither be adjudged a Breach of the divine Law, nor any Ways contrary to the Cuſtom of Nations, to make our beſt Advantage of that which ſo fairly offers it ſelf; ſince thereby we neither become ſo much as interpretatively Authors of the Crime, nor is it any Indication (however we affect the *Treaſon*) that we either love or approve of the *Traitor*. And therefore in the afore-mentioned Caſe of *Camillus*, certainly that great Captain might, without any Impeachment either to his *Juſtice* or *Honour*, have detained Priſoners the noble Youths, whom he found in his Camp, without the Intervention

(a) *Lib.* 3. *de Jur. Bell. ac Pac. Cap.* 1. *N.* 21, 22.

tervention of any Practice of his. For tho' *we are not to do Evil that Good may come of it*, yet nothing hinders me to direct my Actions to a good End, tho' the Wicked Artifices of another, become the Means and Inſtruments whereby I accompliſh it. Certainly this is no more diſſonant from ſound Reaſon, the Law of GOD, nor the Dictate of my own Conſcience, than it would be, for a wiſe General to take Occaſion to make a ſudden Aſſault upon an Enemy's Camp, or a beſieged Town, when invited thereto by a *Mutiny* of thoſe within.

73. There remains yet one Queſtion, which hath been very accurately toſſed among the learned Men of the laſt Age, and that is, Whether that Kind of Fraud, which contains indeed no Breach of Truſt, but yet is attended with *telling Lies*, ſhould be accounted fair and lawful *Stratagem*, or unwarrantable *Deceit*: For Inſtance, When a Man for diſappointing the Enemies Deſigns, utters ſuch Words, as in common Conſtruction can bear no other Meaning, but what is directly contrary to Truth. And here the learned *Grotius* and others, (*a*) are of Opinion, That ſuch Fictions are prohibited by no Law, and only

(a) Grot. *de Jur. Bell. ac Pac. Lib.* 3. *Cap.* 1. *Num.* 17. Alberic. Gentil. *de Jur. Bell. Lib.* 2. *Cap.* 5.

only to be reckoned *lawful Stratagems*; and this they say (and so far they say true) is every where daily practised; and a Number of Authorities of pious Men, who have had the same Sentiments, are by them adduced, besides innumerable Examples of great and illustrious Captains, who have thought it no Impeachment to their Honour, to make Use of plain downright Lies, for compassing a Design upon an Enemy.

74. Yet this Opinion, how specious soever, will ill abide the Test either of *Scripture* or *Reason*; no Man being warranted any more to tell a Lie in Matters of War, than in any other Case. For tho' it be undoubtedly the Duty of every one concerned in the War, as much as in him lies, to preserve Friends and Allies, and to promote the Safety and Happiness of the State he serves, and weaken the Enemies Force, by eluding his Endeavours; yet all this must be understood to be done by such Means as will abide the Test of the divine Precepts. Now *there*, we have it laid down as an incontested Rule, *That we are not to do Evil that Good may come*: (a) And therefore whoever knowingly expresses what is contrary to Truth, does necessarly impinge upon this Precept; Lying being so great an

(a) *Rom.* 3. 8.

an Evil, that he who is Truth it ſelf, has told us by the Mouth of the *Royal Pſalmiſt*, *That he will deſtroy them that ſpeak Leaſing* (a). Now, this being an irrefragable Rule, which (according to the Nature of all Rules) muſt ſtand firm, till an Exception be produced; 'twill, I conceive, be pretty difficult to make appear, how it ſhould loſe its Force in the preſent Caſe, more than any other.

75. And here I might take Occaſion to declaim againſt lying in General; but that being ſomewhat foreign to my Purpoſe, I ſhall confine my ſelf to that Kind of it that is now in our View, and only obſerve, That whatever Advantage Commanders of Armies in our Days have made of ſuch Practices, yet the Uſe of them (and much more their avowed Defence in Print) has been to the equal Shame and Detriment of *Chriſtianity*. For when Men ſhall compare the *Veracity* of *Turks* and Heathens with our *Falſhoods*, it's no Wonder if they be tempted to think our End as fictitious as our Way, and that our Religion has little Countenance from Truth, when they who profeſs it, do avowedly make Lies their Refuge.

76. There are alſo ſome Inſtances alledged by *Grotius* from Scripture, of Lies and Falſhoods

(a) *Pſalms* 5. 6.

hoods advanced by the People of GOD, for preſerving Friends and Allies, and annoying Enemies; ſuch as thoſe of *Rahab* and *Eliſha*(a). But in the firſt Inſtance it's true, *Rahab* did deceive the *Searchers*, that ſhe might preſerve the Lives of the *Spies*; but it can never be evinced, That the Favours ſhe after received, were granted her as a Reward of her Lie, or for uſing ſuch an unwarrantable Means towards a good End; but rather for the good End it ſelf, which ſhe, tho' by unlawful Means, had compaſſed: Juſt as the *Egyptian Midwives* were bleſſed, not for the Lie they told, but for ſaving alive the *Hebrew* Children. And as to *Eliſha*, it doth not at all appear that he told a Lie: For when he ſaid, *This is not the Way, neither is this the City; follow me, and I will bring you to the Man whom ye ſeek*, the *Aſſyrian* Army was ſmitten with Blindneſs, and the Prophet knew that their Sight would not be reſtored to them, till they ſhould enter *Samaria*; ſo that without any Lie, he being by GOD aſſured, That they could not ſee nor take him except within the Walls of *Samaria*, ſaid to them, *This is not the Way*, &c. *I will bring you*, &c. to wit, to a Place, where you may ſee and apprehend the Man whom you ſeek.

77. As

(a) *Judges* 2. 4, 5. 2 *Kings* 6. 19.

77. As to the Authority of pious Men, and Practice of great Captains; it will be ſufficient to anſwer a Lawyer by a known Aphoriſm in Law, (a) *Non tam ſpectandum eſt quid Romæ factum eſt, quam quid fieri debeat.*

78. 3*dly*, Laſtly, War is carried on either by *Land*, or by *Sea*: The laſt is commonly much more formidable to theſe immediately ingaged, than the other. For in Sea Engagements, Men are to fight not only againſt the *Enemy*, but againſt *Wind* and *Weather*, *Fire* and *Water*; ſo that it often falls out, that they who have eſcaped the Rage of the *Enemy*, are conſumed by the *mercileſs Flames*; and they whom even the Fire hath ſpared, are ſwallowed up by the *Waves*.

79. Yet, as it's undeniable, That the maritime Powers of *Europe*, do owe much of their preſent Greatneſs to their Strength at Sea; ſo have they been always much profuſer in indulging Privileges to Mariners, than to the Land Soldiery, and very liberal in their Encouragements to their Subjects, to become Sea Men. Wherefore, becauſe I will have but little Occaſion in the following Treatiſe, to diſcourſe of Sea Service, I ſhall once for all, ſet down a Kind of Breviate of a late Act of Parliament made

(a) *L.* 12. *ff. de Offic. Præſid.*

made in *England*, for Encouragement of ſuch as are willing to engage in that Service (*a*).

80. The Statute invites and encourages all Sea Men, Water Men, Fiſhers, *&c.* to give in their Names, which are to be regiſtred *gratis*, ſo that the Names of all the Sea Men in the Kingdom, may from Time to Time appear, to the End, that ſo many of them as are fit for Service, may each Year, be ordered for the Service of the Fleet. In every Year (the Number not exceeding 30000) each of them, whether in actual Service or not, is to receive of Bounty, 40 *Shill.* beſides his Pay, which he is intitled to, by being in actual Service: Or if they exceed that Number, the ſaid 15000 lb. is to be given at 40 *Shill.* a Piece, to the longeſt enter'd. And none but ſuch as are ſo regiſtred, are to be preferred to any Commiſſion; and thoſe regiſtred, are allowed to aſſign to their Wives, *&c.* two of ſix Months Pay, or if the Perſon die, all that's reſting him is to be paid to his Executors, without waiting the Ships Return, or her general Pay. Moreover, every ſuch Sea Man is to have his Dividend of Prizes, if he be concerned in the taking, double to an unregiſtred Sea Man; and they are declared free from ſerving upon *Juries* or in the *Militia*, or being *Aſſeſſors*, or *Collectors*

(*a*) *Stat.* 7, & 8. W. III. *Cap.* 21.

tors of *Taxes*, *Conſtables*, *Tithing-men*, *Church-wardens*, *Overſeers*, &c. unleſs they be willing. Further yet, every ſuch regiſtred Sea Man being aged or diſabled, is to be admitted into *Greenwich* Hoſpital, as alſo their poor Widows, and their Children educated at the Charge of the ſaid Hoſpital, till they can maintain themſelves, ſo far as the Hoſpital ſhall be able. But if they deſert, or after 30 Days warning, ſhall not repair to their reſpective Ships, they are to loſe the Benefit of this Act, and ſerve 6 Months without Pay, but not ſuffer as Deſerters. *Laſtly*, all Sea Men even in private Ships, are to allow Sixpence a Month out of their Wages, for helping to maintain the ſaid Hoſpital. But if they be under or above the aforeſaid Ages, they are not to be compelled to ſerve. And if they be advanced to any Poſt in the Navy, above a ſimple Sailor, they loſe the Privileges of this Act, and do not run the Hazard of the Penalties thereof. But it's declared, That they may alſo be deprived of the abovementioned Benefits, either at their Deſire, or for a Delinquency.

81. But Puniſhments being no leſs neceſſary than Privileges, eſpecially to ſuch as carry Arms; whether by Sea or Land, the Legiſlature of *England* about 40 Years ago, did alſo publiſh *Rules* and *Articles of War*, for the better Government of his Majeſty's Navy; to which

which the Reader is referred *(a)*, And that Mariners deboarding from their Duty, might have ſo many more Checks upon their Behaviour, by a later Statute *(b)*, the ordinary criminal Judges are declared *competent, in Caſe of any Offence againſt the aforeſaid Act.*

(a) *Act.* 13. Car. II. (b) *Stat.* 5. & 6. W. and M. *Seſſ.* 2. *Cap.* 19.

TIT.

TITLE. II.

Of the ancient and modern Militia: The various Forms of levying Armies: And the Qualifications of a Soldier.

1. IF we take a ſerious View of that rich and powerful State of old *Rome*, which, from ſo contemptible a Beginning as a ſmall Company of Thieves, came at length to give Laws to ſo great a Part of the known World; we ſhall all along find their ſupreme Rulers, no leſs anxiouſly *concerned* for the *Glory* of their Arms abroad, than *careful* about the *Juſtice* of their Laws at home. And indeed, without Force of Arms, it's ſcarce poſſible to preſerve Laws unviolate, neither can Peace be long injoyed without a familiar Acquaintance with War. And hence it was, That the ancient *Romans*, when ingaged in laſting and bloody Wars againſt their Neighbours, did never allow Acceſs even to the *civil Magiſtracy*, for any that were not expert Soldiers, or ſuch, at leaſt, as had ſpent ten Years in that Service. But above all, their ſtrict and ſevere Obſervance of military Diſcipline, may juſtly be accounted one great Cauſe of the prodigious

Succeſs of their Arms. And for this End, they made Choice of none for the Service, but ſuch as by previous Trial they found fit for the various Fatigues of War, and then *liberally* beſtowed Rewards on ſuch as deſerved them; and no leſs *ſeverely* and impartially puniſhed the Guilty. Of which I ſhall have Occaſion to ſpeak hereafter.

2. It being ſuppoſed then, That a War was previouſly denounced, that which neceſſarly followed, was liſting of Soldiers. A Soldier, according to the *Roman* Form, was *a Perſon, who being duly liſted and inrolled, did actually ſerve under Pay, in ſome particular Legion or Cohort of the Army.*

3. The modern Name is derived from the *feudal* Word, SOLD, which properly ſignifies Pay, and comes from the *Latine Solidus*: But, *Miles*, ſeems to be derived from *Mille* (*a*); for in the Infancy of the *Roman* State, there were no more than a Thouſand Men drawn out of each *Tribe* for an Expedition; and tho' in after Times that Number was vaſtly augmented, yet the old Name was ſtill retained.

4. From the Definition given, it is plain, That according to the *Roman* Conſtitution, before any Man could properly be denominate a Soldier, he behooved, *Firſt*, To be *liſted* or *inrolled*. *Secondly*, To be actually under Pay.

5. As

(*a*) *Vid. L.* 1. *ff. de milit. Teſtam.*

5. As to the firſt of theſe, it was not ſufficient according to them, That a Man's Name was written down in the general Muſter Rolls, but he behooved to be claſſed in ſome particular *Cors (a)*: For till that was done, the military Oath was not adminiſtred to him, according to *Vegetius (b)*. And in this the *Roman* Soldiers mainly differed from the *Tyrones* or Probationers, (whom we call freſh Water Soldiers, and *Novices*) who till they were ſolemnly inrolled, injoyed none of the Privileges competent to Soldiers as ſuch *(c)*. Hence then, before a Soldier could be ſaid to be duly liſted, ſeveral Solemnities were to preceed: As, *Firſt*, They behooved to be *drawn* or *choſen*. *Secondly*, They were to be *reviewed* and *tried*. *Thirdly*, Solemnly *ſworn* to their Colours. And *Fourthly*, *Inrolled*; which laſt Act did properly conſtitute them Soldiers, and intitled them to all the Immunities and Privileges competent to ſuch *(d)*.

6. In ancienter Times, any *Roman* might be compelled to ſerve in the Wars; ſo that whoever being called out or choſen, did not appear, was looked upon as a Traitor, and puniſhed to Death *(e)*: Or if a Father had withdrawn

(a) *L.* 4. *l.* 35. §. 1. *l.* 42. *ff. de Teſtam. milit. l.* 31. *C. Locut. l.* 15. *C. de Re milit.* (b) *Lib.* 2. *de Re mil. C.* 5. (c) *L.* 42. *ff. de Teſt. mil.* (d) *D. L.* 42. (e) *L.* 4. §. 10. *ff. de Re milit.*

his Son from the Service, Law ordained him to be beaten with Rods, if in Time of Peace; but if during a War, he was to be puniſhed with Forfeiture and Baniſhment, and the Son himſelf degraded (*a*). But that Method was after altered, and the Army ſupplied only by ſuch as voluntarly liſted (*b*).

7. But it is not unworthy of our Remark, and Imitation too, that the *Romans* in diſtributing their new choſen Soldiers among the reſpective Legions, took ſpecial Care that one Legion ſhould not exceed another, either in *Numbers* or *true Worth* of Men; whereby they removed all Clokes for Cowardice, and equally encouraged all. And for this End the *Conſuls* were in Uſe, at an appointed Day, to call all the *Roman* Youth to the *Capitol*, and there having ſet aſide in Groſs, as many Men, as would make up the Number of Legions they intended to levy, the *Tribune* of the firſt *Legion* had his Draught of the firſt Man, out of a Number conſiſting of as many as uſually made up a *Legion*: And an equal Number being preſented to the *Tribune* of the ſecond *Legion*, the next Election was his; and ſo it went round till the *Legions* were compleated (*c*). As to the *Horſe*, they were by their Office Gentlemen, and were a Part choſen or approven by the

(a) *D. L.* 4. §. 11. (b) *D. L.* 4. §. 10. (c) Polyb. *Lib.* 6.

the *Cenſors*; and they whoſe Horſes were lean or in an ill Condition, were deprived of them, which was looked upon as the higheſt Mark of Diſgrace *(a)*.

8. Soldiers being thus *liſted*, were commonly exerciſed for four Months, and in Caſe, during that Time of Probation, any of them were found unfit for the Service, others were ſubſtituted in their Place. Thereafter they were ſolemnly *reviewed* by him who was to command in the Expedition, which after the Tranſlation of the Seat of the *Empire* to the Eaſt, was reſerved to the *Emperors* alone *(b)*.

9. After this *Review*, Soldiers had publick *Stigma*'s or Marks put on their right Arms, which no Length of Time nor Art of Man could intirely wear out or deface: And this partly, That it might appear they had paſt the ordinary *Probation* or *Trial*; and chiefly, that *Deſerters* might be thereby diſcovered. And to this Cuſtom ſome have not improbably thought the Apoſtle *Paul* alludes, Gal. 6. 17. *For I bear in my Body the* Marks *of the Lord* Jeſus *(c)*.

10. Next to this, they ſolemnly took the *military Oath*, which was called *Sacramentum*,

(a) Gell. *Noct. Attic. Lib.* 4. *Cap.* 12. (b) *L.* 17. *C. de Re milit.* (c) *vid. L.* 3. *C. de Fabricens* Veget. *de Re milit. Lib.* 1. *Cap.* 8.

and therefore is to this Day appropriated to *Baptiſm*, and the *Euchariſt*. This military Oath was *a ſet Formula of Words, whereby Soldiers promiſed implicite Obedience to their Commanders, and that they would not deſert the Service, nor at any Time refuſe to expoſe themſelves to the utmoſt Perils, for the Safety and Welfare of the State.* The Ceremony was yearly renewed upon the firſt of *January* (*a*); and, according to *Polybius* (*b*), was performed in this Manner: One Man being pick't out of the Legion with a loud Voice, after the *Tribune* rehearſed the *Formula*; whereupon the whole Legion as one Man, declared their Conſent to abide by it; and this for greater Solemnity, they ſometimes did, with their Swords drawn, and their Necks ſtretched forth (*c*).

11. The taking this military Oath, before the ſecond *Punick* War was *Arbitrary*; but then and ever after, it was *ſpecially injoined* by the Senate (*d*). But in Caſe of a *Tumult* or *ſudden Invaſion*, when ſo many nice Solemnities were impracticable, he that was to command, went ſtraight to the *Capitol*, and having there hung out two Enſigns, the one Red for the Foot, the other Blue for the Horſe, he cauſed make open Proclamation, that whoever

(a) Sueton. *in Vita* Galbæ, *Cap.* 16. (b) *Lib.* 6. (c) Amman. Marcel. *Lib.* 21. (d) Liv. *Lib.* 22.

ever loved their Country ſhould immediately follow him as their Leader: Whereupon, ſuch as conveened, ſwore, not one by one, but all at once: Whence this Form was called a *Conjuration*.

12. This ſolemn Swearing was thought ſo eſſential to the very Being of a Soldier, that *Plutarch (a)* tells us no Man was allowed, before he had taken the military Oath, ſo much as to lift up a Weapon to ſtrike an Enemy: Nay, 'twas looked upon as ſo ſacred a Tie, that Hiſtorians report, That the *Roman* Generals, by barely putting the Soldiers in Mind of it, have many Times ſo raiſed their Reſolution, and inſpirited their Courage, that thoſe who were fleeing apace, have been made to return to the Battel, and atchieve a glorious Victory *(b)*.

13. After taking the *military Oath*, the Soldier was liſted in ſome particular Legion, and Company or Band. And that his being ſo liſted might be publickly noticed, he was uſually truſſed with a *military Girdle (c)*, a Ceremony of no *Roman* Invention, for before them, we find it uſed by ſeveral other Nations, ſpecially in the Eaſt, from whence probably the *Romans* had it. Thus we find, *(d)* That the *Moabites*

(a) *Problem.* 38. (b) *See the Hiſtory of Q.* Fabius *as related by* Livy, *Lib.* 2. (c) *L.* 25. 38. §. 1. *L.* 43. *ff. de Teſtam. mil.* (d) 2 *Kings* 3. 21.

Moabites being to fight againſt the confederate Kings, gathered all that were *able to put on Armour*; or, as moſt other Tranſlations render it, *all that girded themſelves*. And in Scripture, *girding up the Loins*, is frequently by Way of Metaphor uſed to expreſs many other Things *(a)*.

14. The other Thing required was, That they be *actually under Pay*. And certainly it's very reaſonable, That they whoſe *Watching* ſecures their Neighbour's *Sleep*, ſhould be maintained at the publick Charges *(b)*. A Soldiers Pay is in the Latine called *Stipendium*, from *Stips*, which ſignifies a ſmall Piece of Money; Pay, in ancient Times having been indeed very ſmall *(c)*.

15. In the Infancy of the *Roman* State, all Men (as I have already hinted) were compelled to carry Arms, and that too upon their own Charges. And hence it was, That when *Servius Tullius* their VI King, had divided the People, according to their Abilities and Subſtance, into ſix Claſſes; the laſt as being the pooreſt, was exeemed from the Wars *(d)*. At length in the Year 347, after the building of *Rome*,

(a) *As in* Job 38. 3. *vid. Connan* 9. *Comment. C.* 5. *N.* 8. (b) *L.* 31. *C. locat. L.* 15. *C. de Re milit. Tot. Tit. C. de Erog. milit. annon. Tot. Tit. C. de milit. Veſt.* (c) *L.* 27. §. 1. *ff. de V. S.* (d) Liv. *Lib.* 1.

Rome, Pay was firſt given to the Foot, and three Years thereafter, to the Horſe alſo, both out of the publick Treaſury *(a)*.

16. The Quantity of their Pay did greatly vary: For in elder Times it was very ſmall, three Pence a Day, being all that the State could at firſt allow. Thereafter, as the publick Money increaſed, ſo did the Soldiers Pay: So that after their Arms had made ſome Progreſs in the *Eaſt*, it was raiſed to five Pence; and by *J. Ceſar* to Ten, and by *Domitian* to 13 Pence. All which is accurately handled by *Puteanus (b)*.

17. Beſides Money, Soldiers were alſo ſupplied with *Clothing*, *Arms*, *Corn*, &c. *(c)* Yet theſe were not beſtowed *gratis*, but the Treaſurer of the Army deducted the Prices from their Pay. The ſo much celebrated *C. Gracchus* was the firſt who introduced a Law, for Soldiers being clothed without diminiſhing their Wages, *(d)* which nevertheleſs fell in Deſuetude, after *Ceſar* had raiſed the Pay to ten Pence, as appears from *Tacitus*, *Annal. Lib.* 1. *Cap.* 17. where they complain, *Militiam gravem & infructuoſam eſſe, denis in Diem Aſſibus Animam & Corpus æſtimari*: *Hinc*

(a) Putean. *Syntag. de Stip. mil. C.* 4. (b) *Dict. Syntag.* (c) Hence the Titles in the *Code de Erog. milit. Annon. de Mil. Veſt.* &c. (d) Plutarch *in Vita C. Gracchi.*

Hinc Veſtem, Arma, Tentoria ; hinc Sevitiam Centurionum & Vacationes Munerum redimi. But in after Times, and in the Declenſion of that Empire, military Clothing, (or Allowance for it in Money) as alſo Proviſions, were granted to the Soldiers, without any Deduction *(a)*. But I proceed to the latter Part of the *Rubrick*.

18. Since then it's beyond Controverſie that all Men are not fit to carry Arms ; it will not, I hope, be unſeaſonable to examine who and what Sorts of Men are fitteſt to be choſen for this no leſs honourable than painful Imployment, and who to be rejected.

19. And in the General, that Men well Bodied, Men of Probity, and Courage, (nay, and *Birth* too, ſo far as they can be had) will make the beſt Soldiers, is ſcarce to be doubted. But particularly I find the greateſt Captains *cæteris paribus*, always inclined to prefer the *Children* of Soldiers to all others ; eſpecially if the Parents Deportment has been ſuch, as has made their Names to laſt, when their Bodies were long in the Duſt. *(b)* For it's commonly obſerved, That the Virtues and Vices of a Father, are often taken

(a) *L.* 2. 3. *C. d. milit. Veſt. L.* 6.. 7. *C. de Erog. milit. annon.* (b) See for this *tot. Tit. C. de fil. Offic. milit. qui in Bell. Mor. Arg. L.* 13. *C. de Advocat. diverſ. judicior.*

taken up by his Children, as a Part of their Patrimony; (a) yet if the Children of such Men have visibly degenerated, their Extraction alone ought never to prefer them.

20. It were also very proper, so far as they can be had, to make Choice of Men of *Substance*, especially such as possess Land Estates; for with such the Love of their *Fortunes*, as well as of their *Country*, will readily prevail to distinguish themselves by a better than ordinary Behaviour. Whereas to him that hath nothing to lose, all Parts of the broad World are alike, so that being driven from one Place, it's no Trouble to him to take up his Abode in another. And whether the Publick sink or swim, he is indifferent. And this seems to be the true Reason of the Order taken by *Servius Tullius*, which I have already mentioned, to exeem the lowest Class of the People from the Wars. Yet still we must acknowledge, That there want not Abundance of Instances of Men both in ancient Times, and in our own Days, who from a pure Principle of Love to their Prince and Country, tho' they had nothing but their Persons to risk, have in noble and heroick Atchievements, far outstript the wealthiest Subject.

21. But that it may yet further appear, what Men are fittest to be pickt out for Soldiers,

(a) *Arg. L. 5. C. ad Leg. Jul. Majest.*

diers, it will not be amiſs to take a ſhort View of ſuch as either Law doth reprobate, or are generally rejected by Commanders, whereby it will be eaſie to determine, who they are that are fit to be liſted.

22. And, *Firſt*, All *Clergy-men* are to be *excuſed*, nay not ſo much as *allowed* to carry Arms, ſince thereby they are called off from that *ſpiritual Warfare*, which in a peculiar Manner belongs to them. And hence it is that by the *feudal Cuſtoms*, (*a*) no ſooner was a Man entred upon the Office of Prieſthood, but he ceaſed from being a ſecular Soldier. Yet in Caſes of great and urgent Neceſſity, it's not *unlawful*, yea it's the *Duty* of *Churchmen* to jepoard their Lives, and by their Example to encourage others to hazard all that's dear to them for the publick Good. Thus we read in *Plutarch*, (*b*) That there was an ancient Law among the *Romans*, exeeming their Prieſts from the Wars, unleſs the *Gauls* ſhould make an Attempt upon the City. For they having once in their Infant State, ſeverely ſmarted under the conquering Arms of that warlick, bitter, and haſty Nation, retained ever after ſuch deep Impreſſions of it, That in Caſe of another Invaſion from that Side, they imagined they were not to fight ſo much for Glory,

(a) 2. *F.* 21. (b) *In vita* Camilli *ſub Fin.*

Glory, and the Inlargement of their Territories, (which otherwiſe was often their only Cauſe of making War) nay, nor for *Liberty* either, as for *Life* it ſelf: And therefore they very juſtly inferred, That in ſuch a Caſe their Prieſts going out to the War, was not as *Soldiers*, but as *Men* bound by the Law of Nature to repel Force by Force; and by the Law of Reaſon to defend their own, and their Wives and Childrens Lives; the Neglect whereof would be plain Self-murder.

23. Moreover, with Reſpect even to God's own People, tho' under the *old Teſtament* Diſpenſation, the Prieſts did but rarely carry Arms, yet certain it is, that they were not altogether exempt from ſome warlick Offices; for we find them often converſant in the Camp, and at other Times commanding conſiderable Detachments upon particular Expeditions: Nay, to them it belonged to ſound the Trumpets, when the People went out to Battel. *Laſtly*, We find them commanded immediately before any Ingagement, to exhort the People, (the *Formula* whereof is ſet down, *Num.* 30. 6. *Deut.* 20. 23. *Joſhua* 6. 2. 2 *Chron.* 13. 12.) and ſtrengthen them againſt all Fears and Apprehenſions of the Enemies Strength or Numbers.

24. 2*dly*, *All Slaves* by the *Roman* Law, were regularly debarred from carrying Arms.

And

(a) And indeed a noble and generous Spirit, and a Mind bent upon great and glorious Actions, is very neceſſary in a Soldier whoſe Love to his Country ought to be ſo ſtrong, as to make him overlook or contemn the greateſt Dangers, and overcome the greateſt Difficulties, when the Publick Saſety calls upon him to hazard himſelf. But how ſhould ſuch Qualities as theſe be found in a Slave? or what Reaſon to expect any Atchievement worthy of a gallant Man, from thoſe who are preſumed to be ſo intent upon degenerous ſervile Imployments, and going and coming at their Maſter's Nod, that it is not to be thought they will ever dare to lift up a Thought to any Thing that's gallant and noble; nay, who being under ſo conſtant an Apprehenſion of the Cudgel, cannot fail to become low ſpirited, and daſtardly? And ſo indeed ancient Story tells us, that the *Scythians* being by far out numbred by their rebellious Slaves, did nevertheleſs put them to Flight, only by ſhaking the Whip over their Heads And this (together with the Jealouſie of their proving treacherous) ſeems to have given Occaſion to that ſevere Sanction among the ancient *Romans*, appointing all Slaves to be put to Death, that but made Offer of themſelves to

(a) *L.* 8. 11. *ff. de Re milit.*

to be liſted (*a*). But if a Soldier did ſell himſelf, or ſuffer another to ſell him as a Slave, ſuch an abject Practice was thought ſo unworthy of his Profeſſion, that nothing leſs than his Blood could wipe off the Stain. (*b*)

25. Yet ſtill all this (as in the former Inſtance) is to be underſtood to take Place only in Caſes, where there is no urgent Neceſſity: It being undoubtedly the Height of Madneſs, when there is ſuch a Scarcity of free-born Subjects. that the Enemy is like to prevail, for a People to chooſe rather to become Slaves themſelves, than to arm ſuch as are already ſo, for their Defence. It's true the Credit and Glory of a Nation juſtly prompts them in ordinary Caſes, to debar ſuch Wretches from ſo honourable an Imployment, yet Neceſſity which is circumſcribed by no Law, many Times will compel Men to that from which otherwiſe they are moſt averſe. And if of two Evils the leaſt is to be choſen, then certainly it's much better to preſerve a ſinking State, by any Means lawful, (however inglorious) than out of an auſtere, unſeaſonable Conceit, to ſuffer it to periſh; for to ſuch a Caſe, the notable Aphoriſm of *Valerius Maximus*, (*c*) becomes very applicable, *Cædit interdum*

(a) *L.* 11. *ff. de Re millit.* (b) *L.* 14. *ff. de Pæn.* (c) *Lib.* 7. *Cap.* 6. *N.* 1.

terdum generoſus Spiritus Utilitati, & Fortunæ Viribus ſuccumbit, ubi, niſi tutiora eligere Conſilia, ſpecioſa ſequenti concidendum eſt.

26. Yet even in ſuch a Pinch, before Slaves be liſted as Soldiers, it were the beſt Courſe firſt to ſet them at Liberty; that ſo the Memory of ſo ineſtimable a Benefit, joined with Love to the Country, which now they can call *theirs*, may inſpirit them with Courage and Fidelity. And this was the Method of the wiſe and valiant *Romans*, which is elegantly thus expreſſed by *Florus*, (a) *Arma non erant detracta ſunt Templis; deerat Juventus, in Sacramentum Militiæ liberata Servitia.* Nay, the noble *Spartans* being in ſuch a Strait, not only manumitted their Slaves, but for their Encouragement to diſtinguiſh themſelves, promiſed them in Marriage, the Widows of ſuch as ſhould fall in the War. (b)

27. Thirdly, *Such as had not attained the Age of ſeventeen Years*, were regularly debarred by the *Roman* Form, from carrying Arms. (c) Yet a few Inſtances there are of ſome, who, for the eminent Services done by their Anceſtors, have been made *Tribunes* before they arrived at that Age. (d) But then, ſuch were neither bound to undergo the Fatigues incumbent

(a) *Lib.* 2. *Cap.* 6. (b) Juſtin. *Lib.* 3. C. 5. (c) Hotoman. *Diſp. Feud. Cap.* 14. (d) *Vid. L. fin. C. de Teſt. milit.*

incumbent on their Charge, nor did they enjoy the Privileges competent to Soldiers: (a) But were only looked upon as a Kind of *honorary Officers*.

28. The Period of Mens Age for being admitted to the Profeſſion of the Sword, has greatly varied, according to the different Situation of Places, Temper of the Climes, or Genius of the People. For we find among the *Iſraelites* (by God's firſt Appointment) *all that were able to go forth to War, were reckoned from twenty Years old and upwards*; (b) which in all their after Numbrings, was ever looked upon as the Standard. The *Athenians* again, obliged all their Youth to liſt themſelves, and take the Military Oath, at the Age of eighteen. (c) But the fixed Period by the Cuſtom of *Rome*, was, as I have ſaid, ſeventeen Years compleat; which was firſt introduced by *Servius Tullius* their Sixth King; (d) and thereafter a Law was brought in by *C. Gracchus*, That none under that Age ſhould, in any Caſe, be compelled to carry Arms, (e) and as regularly they were not admitted before ſeventeen; ſo neither were they compelled if paſt fourty ſeven.

(a) *Vid.* L. *fin. de Teſt. milit.* (b) Exod. 30. 14. Numb. 1. 3. (c) Carol. Sigon *de Repub. Athenienſ. Lib.* 4. *Cap.* 5. (d) *A.* Gell. *Lib.* 10. *Noct. Attic. Cap.* 28. (e) Plutarch. *in Vita* Graechi, Alex. *ab* Alexandro. *Gen. dier. Lib.* 1. *Cap.* 20.

29. As to the Age of their Commanders or Officers, no Man was, ordinarly, allowed to carry any commanding Office in a *Legion*, till he had ſerved as a private Soldier, at leaſt half his Time, *viz.* ten Years if in Foot-ſervice, and five if among the Horſe. But thoſe who had ſerved out their whole Time, were called *Emeriti*, and were to be honourably diſmiſt; which nevertheleſs was ſometimes diſpenſed with, when the State could not conveniently ſpare them.

30. 4*ly*, *Women* ſeem by Nature it ſelf, to be debarred from the Uſe of Arms; and ſince Law hath interdicted them the Exerciſe of all publick Offices in the *State*, (a) much more unfit are they for any *Military* Truſt; wherein above all other Imployments, there is required the firmeſt Courage, Conſtancy and Preſence of Mind; joined with ſuch a robuſt Habit of Body, as fits them both to endure the ſevereſt Fatigues, and on long Marches to carry not only the Weight of their Arms, and other Neceſſaries, but frequently many Days Proviſion: Which Qualities, how rarely they are to be found in a Woman, is pretty evident. Leave we them therefore to that which the Apoſtle *Paul* aſſigns as their proper Task, *viz.* *To keep the Houſe*; yet, by the Way,

(a) *L.* 2. *ff. de R. J.*

Way, it can ſcarce be denied, that there have been Inſtances in all Ages, of Women, who in Warlike Exploits, have far outſtript the greateſt Soldiers of the Times they lived in. Nay, if we give Credit to what is recorded in ancient Hiſtory of *Semiramis*, the *Amazon* Ladies, *Thamyris*, *Arthemiſia*, &c. we ſhall ſcarce find their Atchievements exceeded, by the Maſculine Bravery of any Age (*a*).

31. 5*thly*, For the ſame Reaſons that debar Women, they who are wholly *Eunuchs*, are by Authors reckoned alſo unfit for carrying Arms (*b*). Yet, as there have been Women in all Ages, who in this Particular have out-done their Kind; ſo there want not Inſtances of thoſe *Half-men*, who have proven both *gallant Soldiers* and *wiſe Generals*. Thus *Suidas* informs us that *Ariſtonicus* the Eunuch of *Ptolomey* King of *Egypt*, was both a wiſe and valiant Commander. Yet if the Infirmity be not the Effect of manual Caſtration, but is temporary and curable, there is no Ground to debar them (*c*); far leſs thoſe who only are deprived of one Teſticle, ſince to ſuch, the Law allows all Privileges competent to any Male (*d*). And Authors report, That the

(a) *See* Juſtin. *Lib.* 1. *Cap.* 8. *&* *Lib.* 2. *Cap.* 4. Virgil. Æneid. 11. Diodor. Sicul. *Hiſt. Lib.* 2. (b) Cel. Rhodi. Gin. *Lect. antiqu. Lib.* 13. *Cap.* 29. (c) *L.* 4. *ff. de Re milit.* (d) *Vid. L.* 40. §. *ult. ff. de Adopt. L.* 1. *C. de Excuſ. tutor. L.* 39. *ff. de Jur. dot. L.* 14. *ff. de manum. Vindict.*

famous *Narſes* General of the Emperor *Juſtinian*'s Forces, was of this Kind.

32. *6thly*, All ſuch as were *declared Infamous*, or were for ſome attrocious Crime, *condemned to fight with wild Beaſts*, (a Puniſhment then much in Faſhion) or to *perpetual Baniſhment*, or even ſuch in General as were guilty of a *capital Crime*, were by the *Roman* Law not permitted to be Soldiers (*a*); wherof Authors generally give this Reaſon, That the Senſe of Infamy and Conſciouſneſs of Guilt, naturally renders Men timerous and daſtardly: And for this they alledge the known Story of *Philip* of *Macedon*, who being to give Battel to the *Phocians*, who had ſacrilegiouſly robbed the Temple of *Delphos*, cauſed his Army take Garlands of Bay Leaves, (a Tree conſecrated to *Apollo*, whoſe Temple that was) which made ſuch Impreſſion of the Crime upon the Enemies Minds, that throwing down their Arms, they betook themſelves to Flight (*b*). They inſtance alſo the Story already mentioned of the *Scythian* Slaves. Yet it's more than probable, that the true Reaſon of this Prohibition was, the great Honour and Eſteem that the *Romans* juſtly put upon the Profeſſion of the Sword; which they thought

(a) L. 4. §. 1. *& ſeqq. ff. de Re milit.* (b) Juſtin. Lib. 2. *Cap.* 8.

thought would be contaminated and debaſed, by the Admiſſion of ſuch Perſons. Yet if a Man already a Soldier, was declared Infamous for a *military Crime*, (except ſuch as implied Breach of Truſt) he was not upon that Account, to be caſhiered (*a*).

33. 7*thly*, For the ſame Reaſon, all *Hereticks* were by the Chriſtian Emperors *Valentinian* and *Marcian*, expelled their Armies (*b*). And poſterior Conſtitutions admit none to be liſted, till their Orthodoxy be atteſted by three famous Witneſſes, who had ſeen and heard them make Oath upon the Bible thereupon, in Judgment. And whoever otherwiſe preſumed to liſt themſelves, were ordained to be caſhiered, and mulcted in ten Pounds of Gold (*c*).

34. 8*thly*, *Novices*, whom the Latines call *Tyrones*, were by the *Roman* Law prohibited to be liſted as Soldiers, till by paſſing a Kind of *Novitiat* or *Apprenticeſhip*, they came by Degrees to be acquainted with Diſcipline, Order, and Exerciſe (*d*). And for this End, *Vegetius* tells us (*e*), They had their publick teaching Schools, whereof we have Mention alſo in

(a) *Arg.* L. 6. §. 6. *ff. de Injuſt. Rupt. Irrit. Fact* L. 11. *ff. de Re milit.* L. 22. §. 1. *ff. de Legat.* 3. *Junct.* L. 42. *ff. de mil. Teſt.* (b) L. 8. §. 4. C. *de Heretic.* (c) *H.* 20. C. *de Epiſc. audient.* (d) L. 4. *ff. de miliit. Teſt.* L. 3. C. *de Tyron.* (e) *De Re milit.* L. 1. C. 19.

Juſtinian's Code *(a)*. In thoſe Schools they were taught all Manner of Exerciſe of Arms then in Faſhion, and fitted for the Method of Fighting then uſed. Beſides which Exerciſe, theſe Probationers or Novices were made to inure themſelves, during their Novitiat, to the ſevereſt Fatigues; as carrying Burdens for many Miles at once, to the Weight of ſixty Pounds, and ſometimes more; that ſo when Occaſion required, they might be able to carry ſeveral Days Proviſion, beſides their Arms *(b)*. In ſhort, none of the expert *Roman* Generals did ever bring a Company of raw untrained Men into the Field, but did ſtill by little bloodſhed Skirmiſhes, inſtruct them in the Manner of the Fight, and teach them the ready managery of their Weapons; to try by ſuch Mock-fights, what Strength and Skill they had before they ſuffered them to run the fatal Hazard of a Battel.

35. And this ſure is not only needful in the preſent Caſe, but a received Rule in all humane Tranſactions, which generally have this for their Ground-work, that Men muſt paſs throrow the *firſt Principles* and *loweſt Rudiments* of any Art, before they can arrive at its Height. Men ſerve Apprenticeſhips to Trades, and think not themſelves the firſt Day Maſters of

(a) *D.* L. 3. C. *de Tyron.* (b) Veget. *de Re milit.* L. 1. Cap. 19.

of their Craft; and certainly the military Art, is not the eaſieſt of all Trades or Sciences, but will require ſome Time of Imitation, many repeated Trials and Eſſays, to bring Men to an Acquaintance with it. For it is no new Obſerve, That Nature produces but a few Men truly gallant; Induſtry, good Education and Exerciſe, making many more. And on this Account it was that among the *Romans*, even the experteſt Soldiers, were in Uſe, at the ordinary Hours, to go out to Exerciſe (*a*). And it's recorded to the Honour of *Iphicrates* the great *Athenian* General (*b*), That by the conſtant Uſe of *Evolutions*, his Men had arrived to that Degree of Knowledge of their Duty, that no ſooner was the Signal given for Battel, but without Help of their Officers, they would put themſelves in as good Poſture, either for charging or receiving the Enemy, as if they had been martialled by the moſt expert General. *Laſtly*, For begetting the greater Reverence in theſe Novices towards their Teachers, *Sueton* (*c*), and other *Roman* Authors tell us, That the Inſtructers of young Soldiers, were never choſen out of the Canaille, nor was a Buſineſs of that Conſquence (as too frequently

(a) Alexr. ab Alexandro *Gen. Dier. Lib.* 1. *Cap.* 20. (b) Æmil. Probus *in Vita* Iphioratis. (c) *In vita* Cæſaris *Cap.* 26.

ly in our Days it is) committed even to *Veterans*, who had never born any Office, but to their *Equites*, who were all Gentlemen, nay frequently even to ſuch Senators as were experienced in that Affair; and, which is ſtill more remarkable, ſome of the Emperors themſelves, have not diſdained to undergo the Task. Thus *Spartian* tells us, That *Hadrian* who was an old expert Soldier himſelf, thought it no Diſparagement to his Imperial Greatneſs, to exerciſe the *Roman* Youth.

36. 9*thly*, *Husbandmen* and *Labourers of the Ground*, and *Whole-ſale Merchants* (but not *Retailers*) were, by the *common Law*, prohibited to be Soldiers (*a*): The one, leaſt *Agriculture*, which is ſo univerſally neceſſary, ſhould be neglected or deſerted; the other, becauſe, it was thought, that ſuch Merchants behooved to allot ſo large Parcels of their Time for keeping their Buſineſs in any tolerable Order, that it would ſcarce be poſſible for them *ſedulouſly* to attend the Duties of their Calling as Soldiers; which the *Romans* very juſtly conceived, did exact no leſs Time, Induſtry, and Faculties, than any other ſecular Imployment whatſoever: Eſpecially conſidering, That theſe two Callings are ſo far from being compatible, that they are almoſt

(a) L. 3. C. *qui mil. paſſ.* L. Un. C. *Negotiat. ne milit.* L. 31. C. *locat.* L. 15. C. *de Re milit.*

moſt Antipodes to each other. And hence it is that from this general Rule, there is one Exception *(a)*, in Favours of ſuch Merchants as deal only in *buying and ſelling Arms*; there being ſuch an Agreement betwixt that Kind of Traffick and the Profeſſion of the Sword, that it was thought they might very well conſiſt in one Perſon.

37. 10*thly*, Moſt of Writers are for rejecting *old Men*, as utterly unfit for military Service; which it ſeems has been alſo the Opinion of *Servius Tullius*, who, having divided the *Romans* into two Claſſes, the one being called the *Claſs of the Elders*, and the other *of the Youth*, committed the Managery of the Wars only to the latter *(b)*. But ſtill we are to remember, That this is to be underſtood only with Reſpect to *private Soldiers*: For as to *Commanders*, eſpecially *general Perſons*, it's certainly much properer they ſhould be Men of Years. *(c)* And undoubtedly ſince a firm and ſedate Judgment, is much more needful in a Commander, than any bodily Induement, old Men, generally ſpeaking, will make much better Officers than the younger. And hence it is, that *Alexander*'s Army is ſo much celebrated by ancient Hiſtorians, where all Commanders were

(a) *In D. L. Un. C. negot. ne milit.* (b) Liv. Lib. 1. (c) Frontin. *de Stratag.* Lib. 4. Cap. 7. N. 3.

were at leaſt ſixty Years old: So that, as *Juſtin* obſerves, (a) if you had looked upon the Front of his Camp, it appeared liker the Senate of ſome ancient Republick, than an Army. And as to the *Romans*, it was ſcarce poſſible for a young Man to command any of their Armies, becauſe their Commanders in Chief were for the moſt Part the Conſuls themſelves, to which Dignity, no Man, by their Conſtitutions, could arive, till he had paſt the fourty third Year of his Age. And certainly beſides the calm and ſober Counſels that generally attend gray Hairs, there is by every Man a Kind of natural Reverence paid to Age; ſo that it's commonly much eaſier for an aged General, than a young Hotſpur, to keep an Army in tolerable Order.

38. 11*thly*, They alſo debar all ſuch as are *effeminate*, and do habitually indulge their *Appetites*. And upon this Account it is, that expert Generals do for the moſt Part prefer *Labourers of the Ground*, and others of the like Imployment (when they can be had) to thoſe brought up in Cities and Corporations. Becauſe Country Men for the moſt Part are inured to Watching, ſuffering extreme Cold and Heat, *&c.* and are utterly unacquainted with the

(a) *Lib.* 11. *Cap.* 6.

the Effeminacies of the City. (a) And ancient Story informs us, That ſome have been called from ſuch Imployments, to weild a Scepter. Thus when the *Roman* Deputies came to call *T. Quinctius* to the Dictatorſhip, they found him ſtript, and ſweating at the Plough (b).

39. 12*thly*, As Luxury and Effeminacy is very unfit for a Soldier, ſo its conſtant concomitant and genuine Effect, *Timorouſneſs*, is intolerable: And therefore it is, That Authors do juſtly reject all ſuch as are known to be of a *weak*, *timorous*, *daſtardly* Temper (c); ſuch being very apt to do more Hurt, than they can afford Help. And therefore in GOD's own *Inſtitutions of military Law*, it's expreſly injoined, (d) That the Officers before joining Battel, ſhall ſay to the People, *What Man is there that is fearful and faint hearted? Let him go and return unto his Houſe, leſt his Brethrens Heart faint as well as his Heart.*

40. *Laſtly*, The ancient *Romans* not only rejected all *Mercenaries* (whom we call *Soldiers of Fortune*) hired from Strangers, but even during the firſt 500 Years, knew no ſuch Creatures among themſelves, as Men that made

(a) Veget. *de Re milit. Lib.* 1. *Cap.* 3. (b) Liv. *Lib.* 3. Flor. *Lib.* 1. *Cap.* 11. (c) Boter. *de Bello. Cap.* 7. *Num.* 5. (d) *Deut.* 20. 8.

made War their avowed Profeſſion. And it's very remarkable, That tho' afterwards *Pompey*, *Ceſar*, and others, acquired by their Marſhal Atchievements, glorious and never dying Reputations; yet it was rather their Courage and Conduct, than Goodneſs and Vertue, that raiſed their Eſteem ſo high among Men. Whereas it's no leſs obſervable of the *Roman* Generals, before the firſt *Punick* War, That they were generally more celebrated as generous and vertuous Men, than as cunning and expert Commanders. The Reaſon whereof, was, That in thoſe modeſter Times, no Commander made War his Profeſſion, which in after Times they did. Nay, this no leſs takes Place in private Soldiers, nor had the *Romans* any ſuch (during the Period I have mentioned) who made fighting their Trade: Which was attended with this tranſcendent Advantage, That few of them were diſſolute, and thoſe few who deboarded, never miſt to be puniſhed with utmoſt Rigor. In ſhort, the Art of the Sword is at beſt but a *neceſſary Evil*, which in Time of *Peace*, is only to be uſed as an *Exerciſe*, and in Time of *War*, meer *Neceſſity* ought to be the Impellent.

41. And if ſuch Men be but *dangerous* in a *Republick* (as the *Romans* judged they were in theirs) then certainly they are moſt *pernicious in a Monarchy*; they being commonly the Debauchers of a Prince, and unable or unwilling,

ling, or both, to apply themſelves to any other Calling, ſeldom miſs (unleſs they live under that rare Thing, a vertuous and religious Prince) to be Promoters of War in Time of Peace. So that a Prince that entertains them in any conſiderable Number, is put to this unhappy Dilemma, either to be conſtantly ingaged in Confuſion and Bloodſhed, or to feed thoſe *Harpys* with the Subſtance of his People. And of this the *Roman* Hiſtory affords not a few Inſtances. Thus *Auguſtus* and *Tiberius* no ſooner reſolved upon altering the ancient Conſtitution, and governing as Monarchs, than they firſt began to keep up ſtanding Armies, and next introduced the *prætorian Guards*; who when the ſucceeding Emperors allowed them to lay aſide all other Imployments, arrived to that Height of Inſolence, that they became a Terror to the Senate, and pernicious to their Creators themſelves, many of whom they put to Death, and chooſed others; nay, ſometimes ſeveral Emperors were at the ſame Time created by ſeveral Armies, which firſt occaſioned the *Partition*, and next the utter *Exciſion* of the Empire: For, having once inſolently aſſumed the diſpoſing of the ſupreme Government, they at laſt arrived at that Impudence, that after the Death of *Peſtinax*, they made open Portſale of it, as if it had been of common marketable Wares. Which Inſtance alone is ſufficient to convince all Princes, that Levies

are

are beſt made, of ſuch as have ſome diſtinct Profeſſion of their own before; to which, upon Concluſion of a Peace, they may again betake themſelves.

42. But beſide the Inconvenience to the Prince or State, certainly to make *War* a profeſſed Imployment, or which is the ſame Thing, to be a *mercenary Soldier*, is *impious* and *unlawful* in any Man. For it's an unconteſted Truth, that fighting and all other Violence whatſoever, is no further warrantable than is the Cauſe of the War: Yet without any Reſpect to *that*, a mercenary Soldier has a *primary*, if not an *only* View to his Pay; ſo that tho' the Cauſe in it ſelf be juſt, yet is it not ſo to *him*; and therefore a *common Executioner*'s Trade, is not by far ſo deteſtable, ſince he kills *with*, but they *without* a Cauſe: In ſhort, War ſimply conſidered is ſo far from being a lawful Imployment, that nothing but meer Chriſtian Charity, or inevitable Neceſſity, can in GOD's Account, make it ſo much as warrantable. Yet, *mercenary Soldiers* (whatever be the Detriment to their own Conſciences) may nevertheleſs, if their Numbers be but few, do notable Service to thoſe who imploy them.

43. There remains yet one Queſtion, *viz.* Whether an Army made up of *diverſe Nations*, or only of the *Subjects of one Prince or State*, be preferable? But in this it's ſcarce poſſible poſitively to determine any Thing, it being intirely

intirely to be left to the Prudence and Conduct of a wise Prince or General; who, according to the Circumstances of Time, Place, and Persons, will sometimes find it fit to make Choice of the one, and sometimes of the other: Since both (tho' in different Respects) have their own *Advantages* and *Inconveniencies*. For as on the *one* Side, when People of different Nations are in the same Camp, 'twill require more than ordinary Circumspection to keep them in any tolerable Order, so as to avoid Seditions and Mutinies; those of the same Nation being still in Readiness to run to the Assistance of such of their Country-men as they judge injured; so on the *other*, diverse Nations under one Command, are generally esteemed fittest for atchieving a Victory: For each People serving apart under their own Commanders, will readily by a generous Emulation, be animated to distinguish themselves, and outstrip all others; which is not to be expected, when all are of the same Nation. But then the Hazard of Mutinies and Disorders is not by far so great.

Modern

Modern Laws and Cuſtoms relating to this Title.

44. By the preſent Cuſtom of *Europe*, there is far leſs Ceremony required in *liſting* of Soldiers, than anciently there was. The true Reaſon whereof ſeems to be, that now a Days we have not ſuch Choice of Men, but muſt be content to take them as we can get them, few offering themſelves voluntarly to the Service of their Country.

45. As to the *Tyrones* or *Novices*, we have none at preſent properly ſo called. For tho' it be uſual beyond Seas, when Recruits go over, to keep them for ſome Time within Gariſons, without obliging them to attend the Camp, till they learn ſomething of Diſcipline and Exerciſe; yet the *Roman* Form of not allowing them the Privileges competent to Soldiers, takes Place no where in our Days, that I know of. For now, a Man taken from the Plough, ſo ſoon as he has received Earneſt, and is duly *atteſted* or *adjudged* by a Magiſtrate, is thenceforth looked upon as a Soldier; and therefore as he enjoys all their Privileges, ſo is he ſubjected (after reading the Articles of War to him) to the Severity of *marſhal Diſcipline*.

46. In the Method of making Levies, the later Cuſtoms in this *Iſland* keep a Kind of middle Form betwixt the ancient *Roman* Faſhion,

ſhion, whereby all were compelled to go to War; and their after Practice whereby their Armies were only ſupplied, by ſuch as voluntarly liſted themſelves. And indeed, it ſeems in the General, the prudenteſt Courſe, that ſuch as are levied by a Prince in his own Country, be neither altogether *Preſt*, nor altogether *Volunteers*; becauſe *the firſt* would be very dangerous, and even in *the other* Caſe many Inconveniencies muſt needs be incurred, neither would it be a fair Election or *Delectus*, as the *Romans* termed it. Beſides, That by ſuch a Courſe, a State would find their Muſter Rolls but very thin. A middle Way therefore is likeſt to ſucceed, *viz.* neither too *forcible* on the one Hand, nor too *frank* on the other; but ſuch a one as may tempt Men to the War, from a true Reſpect to their Prince and Country: For a Method thus wiſely tempered betwixt *fair* and *foul* Means, can ſcarce ever make a Government run the Hazard of *Diſcontents*, far leſs of *Mutinies* and *Diſorders*.

47. And thus in this *Iſland*, we do indeed compel, yet not all promiſcuouſly, but only idle Vagabonds; and ſuch as have no Imployment, or are guilty of ſmaller Crimes. Whereof I ſhall ſpeak hereafter. But as to *voluntary liſting*, Captains and other Officers do commonly receive Warrants, to beat up Drums in every City, *&c.* whereby all are invited to liſt themſelves under Pay; which whoſoever

doth, he is, after receiving Earneſt, ſolemnly atteſted by a Magiſtrate, and is thenceforth looked upon as a Soldier. But all this is to be underſtood, when we are either engaged in an *offenſive War* beyond Seas, or in aſſiſting our *Allies* and *Confederates* there. For in Caſe either of an *inteſtine War, or Invaſion* from Abroad, a ſhorter Method was taken here, both in ancient and later Times.

48. For our old *Scotiſh* Way of Levy, in the forementioned Caſes (or even in Caſe of an offenſive War with *England*) was, to command by Proclamation, all between the Ages of Sixteen and Sixty, to appear in every Shire or County, and out of thoſe it's not to be doubted, that ſuch a Number was drawn, as the King or his Commander in Chief thought fit. But in later Times an eaſier Courſe has been uſed (not unlike to the *Engliſh Commiſſion of Aray*), *viz.* to impoſe the raiſing of ſuch a Number of Horſe and Foot, on every County proportionally, according to the valued Rents of the Heretors.

49. It will not be improper to remark here, That unleſs ſome unlooked for Emergency exact it, it is the Opinion of the moſt expert modern Commanders, that the conſtant recruiting old Troops and Companies might, generally ſpeaking, as much advance the Service of a Government, and ſave the publick Treaſure much more, than the levying new

Regiments

Regiments doth; the latter ſtill drawing trouble and Expence along with it.

50. But it is not without good Ground the Opinion of ſome, that when a General Levy is to be made, the Mens Age (ſo far as ſuch can be had) ſhould be between Sixteen and Forty or thereby: But when a ſtanding Army is to be recruited, they require only ſuch as are between Sixteen and Twenty. The Reaſon is, That in the *firſt Caſe*, it's fit to make Choice of the moſt expert Soldiers, who are well acquainted with Exerciſe and Diſcipline, to whom a ſmall Inſtruction will be ſufficient: But in the other Caſe, ſuch as are already in Pay, will probably be able to teach the Novices. But tho' ſome Writers on this Head do nicely diſtinguiſh betwixt Climes, and recommend the levying of Men rather out of one Country than another, yet, with Submiſſion, it may be ſafely ſaid, That it's generally the ſecureſt Way for a Prince or State, to levy Men in their own Country, whether it be hot, cold, or temperate; ſince in any Country, Exerciſe and Diſcipline rarely fails to make good Soldiers, and Induſtry here, as in other Caſes, will ſupply the Defects of Nature.

51. As to the *Engliſh* Form of levying, it was of old ſtatute in that Nation, (a) *That*

(a) *Stat.* 11. Hen. VII. 18.

every Perſon having any Office, Fee or Annuity of the King's Grant, ſhould perſonally attend upon him, when he went himſelf in Perſon to the Wars (excepting a few privileged Perſons mentioned in the Act, or ſuch as had the King's Licence, or were letted upon ſome juſt Cauſe) *in Pain to forfeit ſuch Office, Fee and Annuity.* But of late, beſides the ordinary Form of beating up Drums, there was an Act of *Parliament* paſt in the third Year of Her late Majeſties Reign, and yearly ſince continued, appointing *all Juſtices of Peace*, &c. *to raiſe ſuch able bodied Men, as have no lawful Calling, or viſible Means of Livelihood, to ſerve as Soldiers*; and by another Act of the ſeventh Year of that Reign, it's declared, *That all Felons may be liſted on the bare Royal Warrant ſigned for their Pardon, without the Formality of a ſolemn Remiſſion*; and as well theſe as the former are appointed to be adjudged, to belong to any Officer of the Army, who gives in a ſigned Information againſt them. And then, the Acts againſt Mutiny and Deſertion being read to them, they are to receive 20 *Shill.* of Earneſt (or if they voluntarly liſt, 4 *Libs.*) and are thenceforth looked upon as Soldiers. Only ſuch as are *voluntarly liſted*, are free after 3 Years Service, if they pleaſe.

52. But with Reſpect to *Sea Service*, beſides voluntary liſting, Captains of Men of War, at the Commencement, and yearly thereafter during

during the War, do commonly receive *preſs Warrants from the Lord High Admiral, or Commiſſioners of the Admiralty*, for preſſing Men out of all Merchant Ships, only the Maſter and his Mate, and as many more as will ſuffice to carry the Ship to her Port, being excepted, or ſuch as have particular Protections from the Admiral: Which laſt nevertheleſs, is commonly not much regarded by Preſs-men: Nay, this *Preſs* for Sea Service, does commonly extend to *Ships* (when there is Need for it) as well as *Men*: For by a Statute in the Reign King *Charles* II (*a*), (which has been often ſince renewed from Parliament to Parliament, and ſometimes appointed to continue for ſeven Years together) *The Lord High Admiral*, &c. *may when the publick Service requires, appoint Perſons to impreſs ſuch Veſſels, as ſhall be found neceſſary, the Owners receiving always according to the Rates by Merchants.* But by another Act made in the ninth Year of Her late Majeſty, *No Sea Man, nor Sea-faring Man, can be liſted as a Land Soldier.*

53. That equal Diſtribution of Men among the *Roman* Legions, which I have taken Notice of, is ſcarce practicable in our Days. For now each *Colonel* levies what Men he is able either to preſs, or otherwiſe to ingage; and

(a) *Stat.* 13. & 14. Car. II. *Cap.* 20.

theſe are his own, and afterwards regimented, without meddling with others. Nay, in ſome Caſes, we are ſo far from following the *Roman* Pattern in this, that we make our Diſtributions very unequal. For it's now a Cuſtom generally received all *Europe* over, that that Regiment which has the Honour to be a Prince's *Guard de Corps* (much like the *Pretorian* Soldiers at *Rome*) as it far exceeds others in *Numbers*, ſo does it in the *Statures* of Men, for which, commonly there is kept a Standard of ſix Foot high. Beſides, That even in particular Regiments, when *Pikes* were in Faſhion, the talleſt Men were always culled out for that Service: And to this Day, the Companies of *Grenadiers* are commonly ſo choſen.

54. The *military Oath* is ſtill in Uſe in our Days. That injoined by the States of *Holland* is very particular, and binds Soldiers not to *deſert*, and to be faithful and loyal to the *States General*, the *Proteſtant Religion*; and to the *States of the particular Province* to which they belong; and to the *Magiſtrates* of whatever City they ſhall be quartered in, or where they ſhall keep Gariſon. That they ſhall obey their *Commanders*, and keep the military Conſtitutions and *Articles of War*; that they ſhall do no *Damage*, nor *Plunder*, &c. But the Oath enjoined by Her late Majeſty's Articles of War, for Her Land Forces in the low Countries, and Parts beyond Seas, is ſhorter, and expreſly calculated

calculated for Soldiers ſerving under a Monarchy; and is as follows. *I ſwear to be true to our Sovereign Queen* Anne, *and to ſerve Her honeſtly and faithfully, in the Defence of Her Perſon, Crown and Dignity, againſt all Her Enemies and Oppoſers whatſoever; and to obſerve and obey Her Majeſty's Orders, and the Orders of the Generals and Officers ſet over me by Her Majeſty. So help me GOD.* This Oath is appointed to be taken by all Officers and Soldiers of what Quality ſoever (a), which is to be adminiſtred to them by ſuch Perſon or Perſons, and in ſuch Places as the Sovereign, General, Lieutenant-General, or Commander in Chief of the Forces for the Time being, ſhall appoint.

55. *Soldiers Pay* in our Days varies much in diverſe Nations; nay, it's not always the ſame even under the ſame Prince or State, but riſes or falls, as the Government is able to ſpare, or as Men can be eaſily or with Difficulty gotten. And tho' there be few Soldiers who in our Days ſerve *gratis*; yet where ſuch there are, 'twere hard to deny them the Privileges competent to Soldiers, who deſerve much better than ſuch as ſerve for Pay.

56. *Clothing* is now alſo provided for Armies, and all of each Regiment are generally of one Livery, and a certain Quantity of Bread given

(a) *Vid. the ſaid Articles of War. Art.* 7.

given to each Centinel, when an Army is incamped: But both are deduced from their Pay, as the *Romans* of old did, only their *Arms* and *Ammunition* are furniſhed by the Prince they ſerve, and that without any Deduction.

57. As to the forementioned *Qualifications* of a Soldier, 'twere indeed to be wiſhed, that in our Days Men both of *Birth* and *Wealth* would liſt themſelves, for the Service of their Country: And ſo we find all *Europe* over, That ſuch *Gentlemen* as intend to make the Sword their Profeſſion, when they ingage themſelves, and carry Arms, tho' they in ſtrict ſpeaking, can claim no Privilege above *common Centinels* (except what's indulged them in meer Complaiſance by their Officers) yet do they look upon themſelves as bound to give ſome diſtinguiſhing Marks of Bravery; ſo that they are often ſuddenly raiſed to Poſts of the greateſt Honour and Truſt. Yet the Number of ſuch being *comparatively* ſo ſmall, and Men of Subſtance being generally unwilling to liſt themſelves; Officers of Armies are frequently driven to be content with the very *Canaille* of the World.

58. And here we have the true Cauſe why in our Days the *Militia* is fallen into ſuch *Contempt* and *Obloquy*, as if a *civil* and *military* Life were altogether inconſiſtent; and as if a Man behooved to put off Humanity, when he puts

puts on his Armour, and were to bid Adieu to all civil Converſation. And indeed the Deportment of the Generality of common Soldiers in our Days, do's too much juſtifie the Conceit. Yet, if due Care were taken to expel out of Armies all irreclaimably *vitious Perſons*; and could our modern Commanders be brought to follow the noble Pattern of the ancient *Romans*, in ſtrict and ſevere Obſervance of *Diſcipline*, we ſhould quickly find, that there are not two Things more conſonant and compatible than a civil and a military Life. But I return.

59. It will be needleſs to add to what has been obſerved in the former Part of this Title, touching the Unfitneſs of *Clergy-men*, *Minors*, *Women*, &c. And as to the other Perſons whom the *Roman* Law rejects, the modern Cuſtoms with Reſpect to theſe, may be ſummed up in the following Remarks.

60. *Firſt*, In General, as has been already hinted, we are not now ſo ſcrupulous, in admitting unfit Perſons to be Soldiers, as of old they were; for Inſtance, If all *infamous Perſons*, and ſuch as have committed *capital Crimes*, *Hereticks*, (nay *Atheiſts*) thoſe who are plainly *Strangers to the Trade*, and all *daſtardly* and *effeminate* Men; if all theſe, I ſay, were weeded out of the Armies that are at preſent on Foot in *Europe*, it's much to be feared,

feared, that moſt of them would be reduced to a pretty moderate Number.

61. 2*dly*, As to *Slaves*, tho' in *Chriſtendom* we have none, that either by *Birth* or *Captivity* are in that Condition; yet *Ariſtotle* and others have obſerved, That ſome Men there are, who by *Nature* are Slaves; whereby they pretend not to deny, That all Men are free born; their Meaning only is, That ſome Men are of ſo ſturdy and ſtupid a Nature, that it's ſcarce poſſible to imprint on them any Principle of Generoſity, Bravery, or Love to their Country; and who are equally inconcerned, whether they be under the gentle, eaſie, and rightful Government of their *native Prince* or the heavy Yoke of an *uſurping Foreigner*. And indeed to liſt ſuch Men for Soldiers, would, even in this general Penury of good Men, be a very great Injury to the Publick.

62. 3*dly*, The Period for the Age of ſuch as are to be Soldiers, by the inveterate Cuſtom of *Scotland*, ſeems to be fixed betwixt the Ages of 16 and 60, becauſe upon extraordinary Occaſions, ſuch as *Rebellions* within, or *Invaſions* from without, all Males within theſe two Points, are frequently called out. But this will ſcarce be a Rule for *recruiting* or *levying*, in Order to carry them to Places beyond Seas. Nay, in our own Time we have often ſeen Infants made Colonels and Captains in the Regiments that were in actual Service,

Service; which is undoubtedly a great Abuſe, and very diſcouraging to others, who, in the Scripture Phraſe, *do bear the Burden and Heat of the Day.*

63. 4*thly*, We are now ſo far from rejecting *Land Labourers*, that generally the ableſt and beſt qualified modern Soldiers, are ſuch as from the Plough or Mattock, or Shepherd's Staff, do come to carry the Pick or Gun, and at length ſometimes the General's Batton: Their native Simplicity often betraying them, either *voluntarly* to liſt themſelves, or, without their Conſent, to be *ſpirited.*

64. 5*thly*, By our modern Cuſtoms, no *Merchant* is prohibited to become a Soldier, nor even (with his General's Permiſſion) thereafter to continue the Trade. Only by Her late Majeſty Articles of War (*a*), there is one Kind of *Merchandice*, for very plain and obvious Reaſons, expreſly interdicted them; and that is, *That no Officer nor Soldier can be a Victualler in the Army, on Pain of being puniſhed at Diſcretion.*

65. 6*thly*, Altho' it be as true now a Days, as it was ſo many hundred Years ago, that *old Men* make the beſt *Generals*, yet ſcarce any that can be my Reader, but is qualified to be my Witneſs too, that our own Nation hath produced

(a) *Art.* 49.

duced a very freſh Inſtance of a General, who hath ſo abundantly ſupplied the Want of Years, by an invincible Courage, and unparallelled Wiſdom and Conduct, that his Enemies themſelves being Judges, Hiſtory can produce but few Examples of a Commander, who in any of theſe has out-ſtript him.

66. *7thly*, By a Clauſe in a late temporary Act of Parliament (*a*), impowering Juſtices to adjudge idle Vagabonds, *&c. Harveſt Labourers* are excepted: Which Exception is repeated in the Act for the ſucceeding Year.

67. *8thly*, What hath been ſaid of *mercenary Soldiers*, holds as well with Reſpect to the *modern*, as the *ancient* Way of making War. Only we may remark, That ſuch as are ſent Abroad by a Prince, to ſerve with other Allies, and the *Scotiſh* Forces that of old made up the Body of the *French Gens d'Arms*, and the like, do nowiſe deſerve that odious Name.

68. *Laſtly*, The Hazard and Inconvenience, that I have mentioned, of having Soldiers of divers Nations in the ſame Army, as giving Occaſion to dangerous Mutinies and Quarrels, has been, it ſeems, found ſo experimentally true by the States of *Holland*, (whoſe Armies muſt of Neceſſity conſiſt of ſuch a Mixture) that by one of their Articles and Inſtructions of War (*b*) publiſhed towards the

(a) *Anno* 3. Annæ *Reg.* (b) *Art.* 39.

the End of the laſt Century, *All Soldiers are, under Pain of Death, expreſly prohibited, in Caſe of any Tumult or Diſorder among themſelves, to call to their Aſſiſtance, thoſe of their own Nation.*

69. But the ſureſt Method (as has been already hinted) to prevent all ſuch Diſturbances, and many other Inconveniences, ariſing from ſuch a Hodge-podge of Men, is for a Prince or State (when it's practicable) to train up Soldiers of their own Subjects: And in Order to this, the Exerciſe of Arms ought not (even in Time of Peace) to be intermitted.

TIT-

TITLE III.

Of the ſeveral Kinds and Degrees of Soldiers.

1. THE former Title having given ſome Account of the neceſſary Qualifications of a Soldier, Method next leads us, briefly to enquire into their various Kinds and Degrees.

2. And, *Firſt*, Soldiers among the *Romans*, were either *Volunteers*, (which, in the *Latine* Senſe, ſignified only ſuch as voluntarly liſted themſelves, tho' after liſting they ſerved for Pay) or ſuch as for Diſtinction's Sake, were called *preſſed* or *compelled* Soldiers *(a)*. Yet beſide theſe *Volunteers*, there were others, who, even in the modern Senſe, were ſuch; and theſe were they, who having ſerved out their Time, were not *ordinary* Soldiers, and not being called out by the Commander in Chief, were not properly *Evocati*, (of whom I ſhall ſpeak anon) neither received they any Pay, but went voluntarly to the War, either to ſerve their Country, or acquire Riches, Honour, *&c.*

3. 2*dly*,

(a) L. 4. §. 10. *ff. de Re milit.*

3. *2dly*, Soldiers were either *Foot* or *Horſe*. And to the Queſtion, Which of the two is to be *preferred?* I anſwer, That as to Honour, Dignity and Precedency, the Horſe are undoubtedly preferable to the Foot, which was ſolemnly atteſted by *Valerius* the Conſul, who, as *Livy* tells us, (*a*) ſpeaking to the *Equites* or Horſemen, thus encourages them; *Agite Juvenes, præſtate Virtute Peditem, ut Honore atque Ordine præſtatis.* And upon this Account it was that the *German* Emperor *Maximilian* II. in his Inſtructions and Articles of War (*b*), ordains, *That when a Foot Soldier ſhall meet a Trooper in the Camp or Gariſon, he ſhall retire a little out of the Way.* Yet after all this, I cannot but ſubſcribe to the Opinion of *Machiavel* (*c*), who in Reſpect to *Uſefulneſs* and *Service*, prefers the Foot; and that for theſe Reaſons, *Firſt*, Becauſe *Foot* can eaſily make their Way into ſeveral Places, where *Horſe* cannot ſo much as make an Attempt: Whereas it's ſcarce poſſible to name a Spot of Ground, where Horſe and not Foot can give or receive a Charge. And particularly, tho' the Beſieging and Defence of fortified Places, be one of the moſt important Points of War, yet theſe are for the moſt Part carried on by the

Foot

(a) Lib. 3. (b) *Art.* 51. (c) *Diſcourſes upon* Livy, Lib. 2. Cap. 18.

Foot only. 2*dly*, However Horſe may be *managed*, (which Art in our Days is indeed arrived to a wonderful Height) yet Foot are undoubtedly abler to keep their Ranks than they; and in Caſe of any Diſorder, are much ſooner rallied and put in a Poſture again, than poſſibly Horſe can be. Beſides that, 3*dly*, As among Men ſome are indued with noble and gallant Souls, others are daſtardly and puſillanimous; ſo we daily ſee that ſome Horſes are of a high Mettal and couragious, others are reſtive, untoward and dull. Now it may, and very often does fall out, that a mettalled Horſe has a daſtardly Rider, or a gallant Rider a dull Horſe; and in either Caſe the Diſparity muſt certainly be inconvenient. 4*thly*, A Body of Foot well ordered and drawn up, will undoubtedly be too hard a Match for the ſame Number of Horſe, who will ſcarce be able to break the Foot, if there be not ſome Diſproportion betwixt them. 5*thly*, It is pretty remarkable, that we do not read of GOD's own People their uſing Horſe in their Wars; nay we find their Kings expreſly forbidden to *multiply Horſes*. 6*thly*, The *Greeks* and *Romans* had but few Horſes in their Armies; nay theſe laſt many Times made their Horſemen quit their Horſes and fight on Foot (a). 7*thly*, How ſmall Account

(a) *See an Inſtance of this in Cæſars Lib. 1. de Bell. Gallic.*

the *Scots* have made of Horſe, appears plainly from that formidable Army (the greateſt indeed that *Scotland* ever ſaw) raiſed by *Alexander* King of *Scots*, againſt *Henry* III. of *England*, wherein were 100000 Foot, and but 1000 *Galloways*; and long after that, there was an Act of Parliament made (*a*), wherein it's ſtatute, *That if any come to the Place of Rendezvous on Horſe-back, he ſhall ſend back his Horſe with a Foot-boy, except* Earls, Lords, Barons, *&c.* 8*thly*, With the Infantry, the *Artillery* both ancient and modern, was and is conſtantly intruſted: And the *Magazines*, *Proviſions*, *Money*, *fortified Places*, &c. have always been committed to their Care; beſides that in fortified Camps, even the *Cavalry* itſelf is intruſted to the Infantry, who are to maintain the whole Circumvallation of the Camp, nay the Prince or General commonly intruſts even his Perſon to theſe. So that, tho' it cannot be denied that Horſe are uſeful, nay for the moſt Part abſolutely neceſſary in an Army, to ſcout Abroad, to take ſudden Poſſeſſion of a Paſs, to purſue a fleeing Enemy, make Inroads into his Country, or even confront either Horſe or Foot in a Battel; yet ſtill we muſt ſay, That the Hopes and Strength of an Army lies chiefly in the Foot.

(a) *Anno.* 1540.

4. The Horſe again, were either ſuch as ſerved in the *right* and *left* Wing, or thoſe who were termed *Legionaries*, who (according to *Vegetius*) (*a*) were joined to the Foot Legions in the Body of the Army. The firſt (as *A. Gellius* tells us) (*b*) were called *Wings* or *Alæ*, becauſe theſe Bodies of Horſe were poſted on the right and left of the main Battel, much like to Wings in the Bodies of Fowls. But for the moſt Part the *Roman* Cavalry was martialled on the right Wing, and that of the Allies on the left. Thus at the fatal Battel of *Cannæ*, the one Conſul *P. Emilius* took his Poſt on the right Wing with the *Roman* Horſe; and the other, *T. Varro* on the left with the Cavalry of the Allies.

5. 3*dly*, From the various Places where they ſerved, Soldiers alſo had Diverſity of Names. Thus ſome were named *Comitatenſes*, and others *Limitanei*. The firſt of theſe were alſo of two Sorts, *viz.* either *ſuch as conſtantly followed the Camp, and were ſtill upon Duty* (*c*) (and ſo were upon a Level with the *Ripa-renſes* (*d*), or ſuch as *gave conſtant Attendance only on the Prince his Perſon*, being always in Readineſs to execute his Orders, much like to thoſe

(a) *De Re milit. Lib.* 2. *Cap.* 1. (b) *Lib.* 16. *Cap.* 4. (c) *L. fin.* §. 8. 9. *C. de Offic. Pref. Prat.* Afric. (d) *L.* 14. *C. de Re milit.*

thoſe called *Palatine* Soldiers (*a*), or the *Gentlemen Penſioners*, that have of a long Time been entertained by the Kings of *England*. Yet, by the Way, theſe were not the only Soldiers that attended the Prince his Perſon: For we read that *Romulus* choſe out of all the *Tribes* 300 light Horſe. whom he called *Celeres*, becauſe of their Swiftneſs, and who were as a Kind of *Guard de cors* to him, both in Peace and War (*b*). Which long after was followed by the Emperor *Galba*, who, as *Sueton* tells us (*c*) drew out of the *Equeſtrian* Order a competent Number of Horſe, (whom on that Account he called *Evocati*) that were to keep conſtant Guard about his Apartments.

6. But the *Evocati* properly ſo called, were ſuch as had ſerved out their Time, and by the Law of the *Roman Militia*, were no more bound to follow the Wars; yet at the Intreaty of him who was to command in Chief, came without Conſtraint, to wait upon him in an Expedition. Some of theſe ſerved on Horſe, and others a Foot; were claſſed in Troops, and Companies, and had their Officers and Pay; but were exempted from all Manner of *military Duties*, except *Fighting*, and *attending* the Commander in Chief. But to return.

(a) L. 13. 14. *Pr. C. de Re milit.* (b) Liv. *Lib.* 1. (c) *In Galba's Life Cap.* 10.

7. The *Limitanei*, as the Word imports, were ſuch *as lay upon the Borders, and kept Gariſon in Frontier Towns*; and theſe by ſpecial Privilege, were allowed to be Labourers of the Ground (*a*).

8. 4*thly*, There were always in *Roman* Armies, ſome ſelect Companies of gallant Men, who did not belong to any Legion, but conſtantly attended the Commander in Chief, and in all Engagements fought cloſe by his Side: And theſe were called, the *Pretorian Cohorts* (*b*), and in Honour and Dignity, were a Degree above all other private Soldiers, and received half as much more Pay (*c*); but double in the Days of *Auguſtus* and *Tiberius* (*d*). Theſe were more or leſs numerous, according to the Power or Pleaſure of the General; and afterwards were the Emperor's Guards, both in Peace and War. And indeed in *Auguſtus* his Time, and ſo long as they kept within the Bounds of Duty, they very well deſerved to be, as they were called *Firmamentum Imperii*. But under the ſucceeding Emperors, they became the Bane of the State, the Murderers of their Prince; nay often in an inſolent Manner (as has

(a) L. *fin.* §. 8. *C. de Offic. prefect. prat.* Afric. (b) Valerin. *de Re milit. Lib.* 3. *Cap.* 7. (c) *As* Stewech *upon* Veget. *de Re Milit. Lib.* 2. *Cap.* 2. *proves out of* Feſtus. (d) *As appears from* Tacitus *Annal. Lib.* 1. *Cap.* 17.

has been already remarked) aſſumed the diſpoſing of the Empire; wherein they ſeem to be fully imitated by the modern *Turkiſh Janiſaries*.

9. *5thly*, It having been the conſtant Cuſtom of the *Romans*, to ſend Home ſuch as they had liſted, and only aſſign them a Day, to return and meet at a certain Place, where they had their Arms given them out of the publick Magazines *(a)*; hence it is that Soldiers got their Denomination from the various Kinds of Arms they bore; ſome being called *Cataphracti*, (whom we now term *Cuiraſſiers*) others *Velites*, *Pilani*, *Haſtati*, *Principes*, *Triary*, &c.

10. The *Cataphracti* or *Cataphractarii* (ſo called, from the *Cataphract* or *Corſlet* they wore) were armed *capa-pied*, which rendred them almoſt invulnerable: Yet this Inconvenience attended ſuch Armour, that they were eaſily ſeized, tho' they were Horſe, becauſe the Horſe being killed, they remained immoveable, and therefore a ready Prey to the Enemy *(b)*; yet all the *Roman* Horſe were not *Cuiraſſiers*; for ſome were only armed with a Buckler, a Sword, and a Spear.

(a) *L.* 15. *C. de Re milit. Polyb. Lib.* 6. (b) *See* Veget. *de Re milit. Lib.* 3. *Cap.* 23. *with* Stewech *his Notes.*

11. To theſe *Cataphracti*, when they were to engage, were commonly joined the Foot called *Velites*; who were only armed with a Sword, a Target, and Dart; and were always the youngeſt in Election, and choſen out of the poorer Sort (*a*). The Name they had, *quaſi Volites* or *Volantes*, becauſe of all others they had the moſt expedite Way of fighting; for jumping upon the Croops of the Horſe, as *Roman* Authors tell us (*b*), they were carried by the *Cataphracti* into the midſt of the Enemy, and then a lighting, fought mixt with the Horſe. But when they engaged by themſelves, they were called *Pilani*, from the *Pilum* or Dart they bore; but before *Hannibal*'s Invaſion they were called *Rorarii* and *Accenſi*; the firſt, becauſe in fighting, they ſcattered themſelves like Dew upon the Graſs; the other, becauſe they were the ſmalleſt in the *Cenſe* or Tax-roll.

12. The *Haſtati* were ſuch as were of an older ſtanding, and armed with a Buckler, a two edged *Spaniſh* Sword, a Helmet or Head Piece, a Guard or Covering for the Legs, and two Darts: And theſe in ancienter Times were always poſted in the Front of the Battel; and if they were put in any Diſorder, then the

(a) Polyb. *Lib.* 6. (b) Valer. Maxim. *Lib.* 2. *Cap.* 5. *N.* 2. Polyb. *Lib.* 6.

the *Principes* who were drawn up behind them, received the Enemy. Theſe were Men yet more eminent for Strength and Years, and carried the ſame Arms with the *Haſtati*.

13. The laſt Place of all, in the Order of Battel, was aſſigned to the *Triarii*, who were of all the reſt of the oldeſt ſtanding, and carried the ſame Armour that the *Principes* did; except, in ſtead of Darts, they uſed Spears (*a*). But this Order of fighting, as *Vegetius* and others tell us (*b*), was in after Times much altered. Yet generally theſe *Triarii* were ſtill kept for the laſt Reſerve, nor did they uſually fight at all, if the Enemy was beaten by the forementioned two Bodies; but when thoſe were either worſted or ordered to retire, then the *Triarii* made a freſh and furious Charge, which if it failed to prevail, the Safety of the Army intirely depended either on a plain Flight or an orderly Retreat. Hence even in other Caſes, when an Affair became deſperate, they uſed to ſay, *Ad Triarios ventum eſt*.

14. By Occaſion of this Variety of Arms, I ſhall only further remark, That beſides theſe, there were great Numbers of other Machines and

(a) *Of theſe ſee* Polybius *Lib.* 6. (b) *De Re milit. L.* 3. *C.* 14. Valtrin. *de Re milit. Lib.* 3. *C.* 12. Panciroll. *Rer. memorab. Part.* 1. *Tit.* 24. *ibique* Salmuth *in Comment.*

and warlike Ingines, carried about with *Roman* Armies, and chiefly made Use of in Sieges, such as the *battering Ram*, the *Testudo*, the *Pluteus*, the *Musculus*, he *storming Towers*, the *Balista* or *Cross-bow*, the *Scorpion*, the *Catapulta* or *larger Sling*; the minute Description whereof (besides that it's somewhat out of the Road of a Law Treatise) would far exceed the designed Brevity of this Discourse. But the Reader may have a full Account of them all, in the Authors cited on the Margin (*a*).

15. A considerable, tho' indefinite Number of Soldiers conveened together in one Place, or under the Command of one, is properly called an Army; which by the *Roman* Custom was made up of those *comparatively* smaller Bodies, called *Legions*, (in which none but *Romans* did serve) and the auxiliary Troops of their Allies, which they termed *Optiones*. Yet it's not to be doubted, but even a single Legion, with a proportional Number of Auxiliaries, might properly enough be termed an Army (*b*), since it ever consisted of 6000 Men, at least.

16. A

(a) Veget. *de Re milit. Lib.* 4. C. 15. 16, 17, 18, 22. Pancirol. *tract. de Reb. bellic. impresso post comment. ad notit. utriusq. Imper.* Valtrin. *de Re milit. Lib.* 5. *Cap.* 6. Rosin. *Antiq. Rom. Lib.* 10. *Cap.* 16. *Sir* Ja. Turner *Pallas Armata. Lib.* 2. *Cap.* 4. (b) *L.* 2. §. 1. *ff. de his qu. not. infam.*

16. A Legion alſo was made up of divers Parts: For we read of it's containing *Centuriæ* or hundreds, and *Decuriæ* or tens (*a*): And in every Legion there were ten *Cohorts*, thirty *Maniples*, and 60 *Centuries* (*b*). A *Cohort* conſiſted of three *Maniples* or ſix *Centuries*; which were alſo ſubdivided into *Decuries*; And to each of theſe Diviſions were aſſigned their proper Commanders: Thus each *Maniple* was commanded by two *Centurions*, either of whom being abſent, the other commanded the Whole; and theſe were called *Leaders*, and choſe for themſelves an Officer to march in the Rear, whom they called an *Up-bringer*.

17. The Commanders of the whole Legion, were deſigned *Tribunes*, whoſe main Buſineſs, according to *Polybius* (*c*), was, daily to deliver the Orders of the General, as well to the Horſe as Foot that ſerved in his own Legion: So that by the Means of ſubaltern Officers, the common Soldiery was in a Manner conjoined and united to the Commander in Chief; for the Tribunes receiving his Orders, and immediately tranſmitting them to inferior Officers, they very ſoon came to be diſperſt throughout the Army.

18. But ſtill we are to remember, what has been already partly hinted, That a Cohort, which

(a) *L.* 2. §. 1. *ff. de his qui not. infam. L.* 2. *C. de Hæred. Decurion.* (b) A. Gellius *L.* 16. C. 4. (c) *Lib.* 6.

which conſiſted of ſix *Centuries* or *Centuriates*, had no particular Commander, nor yet the *Maniple*; ſo that it ſeems the *Centurion* was the higheſt, (and according to ſome) the *only* Officer in a Legion, beſide the *Tribunes*, whereof for the moſt Part, there were ſix in one Legion; which nevertheleſs was not divided among them, nor had any of them a particular Command of any Part of it; but all and every one commanded the whole Legion; yet by Turns (*a*). In Short, they had *ſix*, and yet but *one* Tribune in a Legion; the other five having the ſame Reſpect and Obedience paid them, as he who for the Time commanded, and ſat in the Council of War with the Conſul, as well as he.

(a) Polyb. *Lib.* 5.

Modern Laws and Cuſtoms relating to this Title.

19. Our modern Armies have put on quite another Shape ſtom that of the Ancients: For tho' they conſiſt indeed of *Legions* (if *Regiments* may be called ſo) yet theſe are made up of *Horſe* and *Foot* diſtinctly, neither are they at any Time mixed, far leſs are the Horſe Pendicles of the Foot, as of old they were. There is alſo a third Claſs of a late Invention, well known by the Name of *Dragoons*; a Sort of Mungrels betwixt the Two, who are bound to fight either on Foot or Horſe-back, as Occaſion requires, and accordingly are taught their Exerciſes both Ways. The Regiments of Horſe are divided into *Squadrons*, and theſe into *Troops*; the Foot into *Battalions*, and theſe again into *Companies*. Both Horſe and Foot, are either ſuch as are expreſly called out for guarding a Prince his Perſon (and on that Account do both conſiſt of greater Numbers, and injoy ſeveral Immunities and Priviledges, nowiſe competent to any other Regiment) or they are *light Horſe* and *common Foot*.

20. The Reaſon of theſe and many other Variations made of late, both in the Method of

of fighting, and martialing Forces, is the ſtupenduous Invention of *Gun-powder*, and the various Machines ſubſervient thereto; all the *larger* Engines of War being now virtually epitomized in the *Cannon*, and the *ſmaller* in the *Hand-gun* and *Piſtol*. For thenceforth all the ancient *Greek* and *Roman* Machines have been laid aſide, there being now little Uſe for *Bucklers* or *Bows*, far leſs for the *Baliſta*, the *Catapult*, the *Scorpion*, or *battering Ram*; nor is their terrible Force, ſo much celebrated among the Ancients, at all now a Days regarded, if compared with theſe later Inventions. Certainly if any of the old *whole Sale Robbers* were now raiſed from the Dead, he could not fail to be terrified and amazed at the Noiſe of our great Guns, and far more at the ſpringing of a Mine; nay, how happy would they pronounce theſe our Days, that have found out ſuch compendious Methods of Ruin and Deſtruction?

21. This Invention of Guns and Gun-powder, is by *Polydon Virgil (a)*, aſcribed to a *German* Peaſant, who he ſays by a meer Accident, brought it firſt to Light. For having for ſome Time kept a Quantity of the Powder of *Sulphure* in a Mortar, mixed with *Nitre*, in Order to compound a Medicine, and covering it with a Stone; thereafter when he had Occaſion

(a) *Lib.* 2. *de Inventor. Rer. Cap.* 11.

caſion to ſtrike Fire near to it with a Flint, a Spark fell into the Mortar; whereupon the Flame brake out ſuddenly, and with a great Noiſe toſſed the Stone into the Air: Whereupon he having cauſed make an Iron Pipe, after ſeveral Experiments, brought it to ſome Degree of Perfection. But moſt other Writers refer this curious Invention to one *Berchthold Niger* (*Swaerts* in *Dutch*) a *Franciſcan* in *Germany*, who was much given to *Alchymy*: And ſome Writers of that Nation add, That upon this Account, he was ordained by the Emperor *Wenceſlaus* to be burnt alive, *Anno* 1389, as *Perillus* was ſerved, who invented the *Brazen Bull*.

22. However, moſt Authors agree, That the *Venetians* were the firſt who tried the Uſe of Fire Arms in a Battel, againſt the *Genoeſe*, about the Year 1380, and that ſo ſucceſsfully too, (which will eaſily be believed) that their thundering Noiſe and ſtupenduous Effects, were then ſo amazing to the *Genoeſe*, that ſeing their Men fall a Pace, yet not knowing by what Means or Inſtruments, they were firſt diſordered, and then the *Venetians* atchieved a notable Victory.

23. But Travellers to *China* report, That the *Chineſes* had the Uſe of all Sorts of Fire Arms, long before the Invention was known in *Europe*. And it's ſaid, That the Natives there tell odd Stories of one of their Kings, who

who lived 1300 Years before Guns were in Uſe with us. He, they ſay, being a *Sorcerer*, did by the Help of a *familiar Spirit*, invent Gun-powder and Artillery, whereby he utterly routed his old Enemies the *Tartars*. Yet it's very well obſerved by our Country-man Sir *James Turner* (a), That if the Uſe of Artillery in that Country be of ſo old a Date, 'twould appear, that the Natives long e're now, ſhould have attained to ſuch a Perfection in Gunnery, that thereby they might have at leaſt defended themſelves in their late Wars againſt thoſe *Tartars*, who nevertheleſs made a full Conqueſt of that flouriſhing Kingdom.

24. Others go yet many Steps further back, and from a Paſſage in *Curtius*, judge it not improbable, that this Contrivance was not unknown in the *Eaſt Indies*, in the Days of *Alexander*: Who, as *Curtius* there tells us, was diſſwaded from the Siege of a Town in *India*, becauſe the Inhabitants defended themſelves with Thunder and Lightning from Heaven. Nay, ſome nice Expoſitors of the *ſacred Text*, who will needs force Scripture to make good their Dreams; have been of Opinion, That the Invention of Gunnery is the fulfilling of a Prophecy in *Revel.* 9. 17, and 19. *And thus I ſaw the Horſes in the Viſion, and them that ſat on*

(a) *Pallas Armat. Lib.* 3. *Cap.* 7.

n them, having Breaſt-plates of Fire, and Ja-inth, and Brimeſtone; and the Heads of the Horſes were as the Heads of Lions; and out of heir Mouths iſſued Fire, and Smoak, and Brim-one. —— For their Power is in their Mouth, nd in their Tails: For their Tails were like nto Serpents, and had Heads, and with them hey do Hart. But *Milton* in his *Paradiſe loſt*, very poetical upon this Head, and brings in ire Arms as uſed by *Lucifer* againſt *Heaven* ſelf.

25. However wild ſuch Conjectures may e, yet certain it is, That never any Thing s yet found out, did offer ſo great a Violence Nature. For by this we daily ſee the hea-ieſt Bodies toſſed violently into the Air of a dden, nay Waters forced up from the Bowels the Earth, and in an Inſtance appearing on s Surface. Of this the Hiſtory of the *Nether-nds* affords a ready and notable Inſtance in oſe five Ships, which the Sieur *d'Aldegond* nt down from *Antwerp*, to ruin the ſtupen-ious Bridge, that the Prince of *Parma* had ade over the *Scheld*: For tho' the Succeſs as not every Way anſwerable to his Deſire, t ſome of the Stockads of the Bridge (which ere ſecured with the utmoſt Art and Indu-ry) were in an Inſtant ſhivered to Pieces; d the River forſaking its Channel, fell in pon the *Spaniards* Sconces. And our Country-

man

man Sir *James Turner* writes *(a)*, (which I have heard atteſted by then living Witneſſes) that at *Delft* in the Year 1654, the Magazine in a Tower upon the Wall, having caſually blown up, it ſuddenly toſſed the Tower from the Foundation into the Air, levelled all the Houſes of the adjacent Streets with the Ground, killed many People, and lamed many more; nay, the Place where the Tower ſtood was not to be known, nor one Stone of it ſeen, but in Lieu thereof a Pool of Water (a Thing very poſſible in that Country) ſuddenly broke out from the Bowels of the Earth. And *Petit* in his Hiſtory of the *Netherlands*, ſays, That a Magazine of Powder having blown up at *Mechline*, during the Duke *d'Alva*'s Government, it made a whole Town ſhake, at the Diſtance of twelve *Engliſh* Miles.

26. From theſe direful and ſtupenduous Effects of Gun-powder, it is that ſome Writers do ſo bitterly inveigh, both againſt the rare Invention and its Author; execrating it in their Writings, and naming the ingenious Inventor, the Words peſt, a Monſter ſent up from the Bottomleſs Pit, and a Diſciple of the Devil in this compendious Art of deſtroying Mankind; and who they ſay, very juſtly deſerved to be purſued by the Fate of *Perillus*, and Experiment

(a) *Pall. Armat. Lib.* 3. *Cap.* 7.

ment the Effects of his own accurſed Invention (a). Theſe and the like Compliments are beſtowed upon the poor Monk, by the Authors quoted on the Margin. But of Men who rail ſo fiercely at a Perſon ſo deſerving, we may ſafely pronounce, that they have given up their Underſtandings to their Spleen; their Eye being evil, becauſe another than themſelves has obliged the World with ſo uſeful an Invention. For certainly, ſince it hath in all Ages been eſteemed moſt commendable and deſerving, to ſearch and try out the various Energies and Effects of natural Cauſes; and it being a no leſs profitable than noble Imployment of Time, to beſtow Part of our Faculties and Induſtry, in diſcovering and communicating to the World any uſeful Thing in Nature, which by the Stupidity or Oſcitancy of Men, hath hitherto lain hid (wherewith even the Heathen World was ſo tranſported, that upon this Account, they have *Deified* poor Mortals like themſelves, after their Death) why ſhould we ſo ungratefully detract from the deſerved Praiſe of a Perſon, who firſt made the Diſcovery of this ſurprizing Effect of the Mixture of a few Minerals? Or where is his Crime, who barely profeſſes

(a) Salmuth. *ad* Panciroll. *Rer. memorab. Par.* 2. *Tit* 18. Philip. Camerar. *Oper. ſubciſiv. Part.* 2. *Cap.* 28. *et Part.* 3. *Cap.* 82. 83.

feſſes himſelf a ſedulous Inveſtigator of hidden natural Cauſes? And it would be conſidered by thoſe Gentlemen, who alledge that under a Monk's Coul, the Devil is the Author of this Invention, that it's but reaſonable they ſhould firſt diſcharge all their Wrath upon the Contrivers of Engines formerly in Uſe; ſo that the curious Architeck of the ancient *Catapulta*, the *Baliſta*, the *Ram*, &c. ſhould firſt in Juſtice be arraigned; eſpecially ſince it's certain, That many more Men have been killed in Battels and Sieges, before the Noiſe of the Gun was heard, than have been ſince. But the Truth is, they who cruelly and unjuſtly make uſe of this Invention, to the Hurt or Deſtruction of their innocent Neighbours, are the only Guilty Perſons here, but nowiſe the firſt ingenious Diſcoverer.

27. *Laſtly*, The Uſe of Fire Arms, is ſo far from being an Enemy to true Courage (as ſome of theſe Writers are pleaſed to object) becauſe the moſt weak and contemptible Perſon, can thereby defeat the ſtouteſt Warrior; that on the contrary, it's the ſureſt Teſt and Touch-ſtone that ever was or can be, of true Bravery and Gallantry. For it would be conſidered, That true Courage, Magnanimity, and Bravery, are Vertues ſeated in the *Soul*, not in the *Body*; yea, Nature it ſelf has generally provided moſt of bodily Strength, to the weakeſt Underſtandings, as is in Particular obſerved

ſerved by *Bodine*, of the *Scythians* (*a*); and even the ſtürdieſt of Men are but weak, when compared with many of the brute Creatures. Hence then it neceſſarly follows, That the Uſe of Fire Arms is a true Detector of *Cowardice*, and Teſt of *Gallantry*; ſince the Hazard from them, does equally threaten all Sorts of Men, whether weak or robuſt. And ſo it has been often found, That ſome luſty Sword in Hand Blades, who, truſting to their own Strength, ſeemed to contemn and undervalue the greateſt Hazards, when nothing was to be imployed but bodily Force, have proven as timerous as Hares, when they were put to ſet their Faces againſt the Mouth of a *Canon*.

28. But however uſeful the Invention may be, yet long Experience having taught us how hazardous, and often pernicious it is to a Government, to allow every Man promiſcuouſly the Uſe of Powder and Fire Arms; ſeveral Princes and States in *Europe*, have prohibited the importing them into their Territories, without ſpecial Licence. And among others, I find an Act of Parliament made in *England* about 30 Years ago, (*b*) declaring, *That it ſhall not be lawful without Licence from the King, to import by Way of Merchandize, Gun-powder, Arms, Ammunition, or Utenſils of War; on Pain to for-*

(a) *Method. Hiſtor. Cap.* 5. (b) *Stat.* 1. Jac. II. C 8.

feit the ſame, and the Importers, or they in whoſe Cuſtody any ſuch Gun-powder, &c. *ſhall be found, are to forfeit triple the Value thereof, one Moiety to the King, the other to the Proſecutor.* But I return.

29. *Volunteers* we ſtill have, and that of both the Kinds I have mentioned §. 2. of this Title. And as to the firſt Sort of them, *viz.* Such as liſt voluntarly, tho' they be to receive Pay, there was in *England* for their Encouragement, a temporary Act of Parliament made, during the late War with *France*, (a) *appointing every ſuch Soldier to receive when liſted* 4 Lib. *not to be deducted from his ordinary Pay.* But in Favours of true Volunteers, *viz.* ſuch as ſerve *gratis*, there is another *Britiſh* Act of a later Date, (b) wherein it's declared, *That no Volunteer ſhall be liable to Proceſs, other than for criminal Matters.*

30. The Penury of Men willing to ſerve, is the Cauſe that now a Days in *Europe*, we know nothing of the *Emeriti*, or ſuch as were anciently termed *Veterans*; Soldiers being now generally conſtrained to ſerve whatever their Age be, till either their Strength decay, or the War end. Only by a late Act of the *Britiſh* Parliament, during the laſt War, (c) it is *ſtatute*, for further

(a) *Anno* 3. Annæ *Reg.* (b) *Anno* 7. Annæ *Reg.* (c) *Anno* 7. Annæ *Reg.*

further Incouragement of ſuch as voluntarly liſt, *That they may demand their Paſs, and be diſmiſſed, if they pleaſe, after three Years Service.*

31. The *Life Guards* of our modern Princes, are not unlike to the *Roman Prætorian Cohorts*; but neither is their Power nor their Inſolence by half ſo great as theirs were, except the *Turkiſh Janiſaries*, who, during the two laſt Ages, have depoſed ſeverals of the Sultans, and put to Death ſome of the prime Miniſters of State. So that it's not improbably predicted by ſome, that as theſe Men were the great Inſtruments of raiſing the *Ottoman* Family to its preſent Grandeur, ſo they may at length prove no leſs active in its Deſtruction.

32. Chriſtian Princes have now alſo their *Guards*, both of Horſe and Foot; who have not only larger *Pay* than otheir Regiments, but more of *Honour* and *Dignity*. They are rarely mixed with other Bodies, but always lead the Van in Marches, and have the right Hand in Incampments and Imbattellings. And by the preſent Cuſtom of *Britain*, a Captain of the Guards, commands as a *Lieutenant Colonel*, a Lieutenant as a *Captain*, *&c.* Moſt Princes and States alſo in *Europe*, are now generally deſirous that their Guards be Men of great Stature, and for ſome Ages paſt, the *Helvetian* Cantons have ſupplied them with Men for that Service. Only in *England* they were never imployed,

their Kings having always a Company of luſty Fellows of their own Subjects (beſides the Regiments of Foot and Horſe Guards) to attend at Court below Stairs; and theſe wear a very ſingular Kind of Habit, and by their Inſtitution ſhould be only *Yeomen*; whence they are to this Day called the *Yeomen of the Guard*, but much better known, by the well deſerved Nick-name of *Beef-eaters*.

33. As to the *French*, beſides the *Swiſſers* of the Guard, they have for many Ages intertained a Body of Men, called *Gens d'Arms*, who by Compact with the Kings of *Scotland*, were all to be *Scotſmen*, both Officers and Soldiers; which continued till within theſe 70 Years or thereby, the Lord *Gray* having been the laſt *Scotſman*, that had the Honour to command as Lieutenant of the *Gens d'Arms*; for their Captain was always the *Duke of Albany* (our King's ſecond Son) by Birth. And here 'twill, I hope, be no impertinent Digreſſion to obſerve, That whatever unjuſt and invidious Aſperſions have by our *neareſt*, but *badeſt* Neighbours, been caſt upon the *Scottiſh* Nation, as being perfidious Betrayers of Truſt; yet Hiſtory whether ancient or modern, can ſcarce afford a parallel Inſtance of a Prince his intruſting the Cuſtody of his Perſon to a Company of Foreigners, who, yet during the Service of almoſt 1000 Years, were never ſaid by any Man, to have demeaned themſelves either unfaithfully

unfaithfully or daſtardly in the Service; but on the contrary, their great and eminent Services, have been ſufficiently atteſted, and rewarded too, by the Kings of *France*, in the many unuſual Marks of Honour and Truſt they conferred upon them.

34. Beſides thoſe *Gens d'Arms*, there is another great Body of Men, which carries the ſame Name, but are not in the King's Pay, but compoſed of theſe Gentlemen, who by the Tenure of their Lands, are bound to ſerve on their own Charges three Months within the Kingdom of *France*, and fourty Days out of it. There are alſo in *France* the *Archers* (ſo called, becauſe before the Invention of Fire Arms, they carried Bows and Arrows) and the *Chevaux Legers*. The firſt of theſe compoſe no ſeveral or diſtinct Body of the Cavalry, but attend the *Gens d'Arms* (as the *Horſe Grenadiers* do the Horſe Guards in *England*) and do Duty for them. But the Light Horſe, are not ſo obliged, but have commonly a *General* of their own.

35. The Invention of Fire Arms having (as has been already obſerved) quite altered the Method of Fighting, we uſe very rarely now a Days, to mix Horſe and Foot in Ingagements: And tho expert Generals do to this Day for the moſt Part, keep a *Cors de Reſerve*, yet the *Roman* Method of fighting in three Bodies ſucceſſively, is now quite out-dated (unleſs

leſs the Straitneſs of the Ground force them to it) our Armies being generally drawn up but three Men Deep at moſt, whereby they are not only enabled to flank or outwing the Enemy, but his Shot, whether ſmall or great, does the leſs Hurt.

36. As to our modern great Engines of War, beſides that the moſt ſuperficial View of them would be rather proportional to a diſtinct Treatiſe, than to a few Pages it would borrow in this, a minute Deſcription of them ſeems not ſo proper in a Law Diſcourſe, but muſt be left to thoſe, whoſe Profeſſion enables them to know them beſt (*a*).

37. In the laſt Place, tho' the *Roman* Legion was ten Times the Number of one of our ordinary modern *Regiments*; yet give me Leave to remark, that we have thereby this notable Advantage, That there are now at leaſt ſix Times ſo many Officers in an Army of the ſame Numbers with one of theirs. For of old indeed, the Foot Companies in *France*, *Germany* and elſewhere, conſiſted generally of 4 or 500 Men; but within theſe 150 Years they were reduced to 100 or thereby. But now (eſpecially in Time of Peace) they are much fewer. Nor do Princes confine themſelves to any Number,

(a) *See Sir* James Turner *his Pallas Armat. Lib.* 3. *Cap.* 7.

Number, but appoint their Companies to be ſtronger or weaker, as the Circumſtances of the War ſeem to require. Now, a Regiment of Foot conſiſting of ten Companies or thereby, ſcarce ever exceeds 500; and yet, beſides the three Field Officers (whom the *Dutch* call *Staff Officers*) the *Chirurgion*, the *Preacher*, and *Quarter-maſter*, a Foot Regiment will have no leſs than twenty ſeven Commiſſion-officers. Whereas by the *Roman* Form, there were no other Officers properly ſo called, in a Legion (which was as much as twelve of our ordinary Regiments) than the Tribunes and Co-centurions. And as to our modern Troops of Horſe and Companies of Dragoons, they are ordinarly much fewer in Number, than the Foot, and yet have ſome more Officers; each Troop having a *Quarter-maſter*.

38. As to the Duties belonging to each Officer, it would beſpeak a great Deal of Arrogance and Folly in one who is no Swordſman by Profeſſion, to undertake ſo much as to point at them, they being generally far better known to thoſe immediately concerned. Only, there being ſomething more required in a *Commander in Chief*, or a *Captain General*, than to be a *meer Soldier*; it's hoped it will be nowiſe foreign to the preſent Purpoſe, to ſubjoin ſome of the neceſſary Qualifications, belonging to ſo high a Truſt. Which therefore ſhall be the Subject of the inſuing Title.

TIT-

TITLE. IV.

Of the neceſſary Qualifications of a Captain General.

1. THAT a Commander in Chief is indiſpenſibly neceſſary in an Army, will eaſily be granted by any who conſider, that without him, the beſt ordered Forces are like a Body without a Head, or a great Maſs of Mettal without any Form.

2. But as the *Neceſſity* of ſuch a Commander is great, and his *Honour* eminent; ſo the *Conſequences* of ſuch a Truſt, are very *deep* and concerning to the Publick; he being not only intruſted with the Lives of all thoſe he commands; but with the Defence and Protection of the Country, the Safety of his Prince or State, and the Lives, Liberties and Properties of all his fellow Subjects; ſince the Loſs of an Army may eaſily be, and often has proven fatal to all theſe.

3. That this Command its ſtanding only in *one Perſon*, is moſt beneficial to the Publick,

lick, both Reaſon and Experience will atteſt. For, as (according to *Alexander*) *the World can neither want one Sun nor endure two*; ſo neither can an Army either want one General, or ſuffer a Plurality. In ſhort, Dominion and Power allow no Co-partnery, nor will *Pompey* willingly brook an Equal. But we need not Arguments to evince this, ſince Experience has long ſince taught the World the ruinous Effects of ſuch an equal Power: And it's more than probable, in ſuch a Caſe, that either while both of them are ſeemingly very careful of the Publick Concerns, yet neither of them are ſo in good Earneſt; or if both ſhould ſeriouſly mind the common Welfare, yet it has been rarely found, that they were *unanimous* in their Counſels; and whilſt Time is ſpent in Debates, and neither of them able to convince his Fellow, the proper Occaſion of Execution is often let ſlip. Nay, innumerable Inſtances could be given of Generals clothed with equal Power, who never ſtudied the Publick Welfare, ſo much as how they might counteract their Competitors; ſo making the Publick at once cloke the Infamy, and bear the Charge of their particular Rancours. Indeed it has been the Obſerve of all Ages, That where theſe private Animoſities are any thing violent, (as in the preſent Caſe commonly they are) they uſually beat down all Conſideration of publick Good. Hiſtorians remark

remark of *Themiſtocles*, that he always thwarted the Counſels of *Ariſtides*, not that he thought it the Intereſt of the *Commonwealth*, but his *own*, to keep down the growing Reputation of his Competitor. Another memorable Inſtance we have in *Alexander*'s Succeſſors, who having been all in equal Honour and Command in the Army, during their Maſter's Life, and he deceaſing without nameing a Succeſſor, the Conteſt for Superiority tho' beginning only in *Words*, yet ſoon came to *Blows*, and never expired till that great and unweildy Monarchy was, by the eager Conteſts of ſo many powerful Competitors, quite ſhivered in Pieces; ſo that in a ſmall Time there was ſcarce any Veſtige to be ſeen of that flouriſhing Empire, the raiſing whereof had coſt ſo much Blood and Treaſure.

4. This great Inconveniency, as it was well underſtood, and wiſely foreſeen, ſo was it no leſs prudently prevented by the ancient *Romans*, who on that Account were never in Uſe to ſend both their Conſuls to command an Army, but aſſigned to each his due Proportion of Legions and auxiliary Troops: And in Caſe of extreme Neceſſity, when the Enemies Numbers were ſo formidable, that both Armies behooved to act in Conjunction, yet even then they were not both allowed to command in Chief jointly, but obeyed and commanded by Turns. And for this Cauſe alſo

alſo it was, that when the State was in greateſt Straits and Perils, there was always a *Dictator* choſen, whoſe Power was abſolute and unlimited.

5. But what is here ſaid of one Perſon's commanding an Army, I intend not ſhould be applied to a ſovereign Prince himſelf, it not being for the moſt Part *needful*, nay nor *proper*, that he ſhould command his Army in Perſon. For ſometimes his neceſſary Attendance on the civil Government, renders it impracticable; and very often it's unfit, eſpecially if the Enemies Strength be formidable. In ſhort, theſe two extreme Points ſeem only to require a Prince his Preſence with his Army, *viz.* either when they are reduced to the *laſt Extremity*, ſo that nothing but an unuſual and ſtupendious Bravery can probably deliver them; or, when they are to march upon an Expedition, where the Conqueſt is abſolutely *ſecure*. For as in the firſt Caſe, Men will probably be animated by their Prince's Preſence to run the greateſt Hazards, and overcome almoſt inſuperable Difficulties, (eſpecially if he frankly undergo the ſame Hardſhips, and willingly expoſe himſelf to the ſame Perils that he injoins to others) ſo, in the other, a Reverence, Love, and Eſteem of his Perſon is raiſed in Mens Minds, at a very cheap Rate. And tho' our Country-man Sir

James

James Turner in his *Pallas Armata (a)*, is for a Monarch his conſtant Preſence with his Army, whatever their Circumſtances be, and gives Inſtances of ſome whoſe ſucceſsful Practice it always was, and of others who by the contrary Method have expoſed themſelves and People to unutterable Loſſes: Yet if we might argue from Examples, it were pretty eaſie to adduce ten for one, eſpecially in modern Times; but it will, I hope, be ſufficient to confront to all his Inſtances, a ſingle one of the late *French* King, who tho' one of the moſt *victorious, wiſe, and fortunate* Princes that we read of in Hiſtory, yet ſcarce ever appeared on the Head of his Army, but when the very *War* implied a *Victory* on his Side, as in the Year 1672, when there was no Enemy in the Field to oppoſe him; ſo that he took more Towns than he beſtowed Days in the Expedition. As on the other Side, the too well known Inſtances of many of our Kings of *Scots*, who have commanded their own Armies upon Expeditions againſt our ancient Enemies the *Engliſh*, and the many ruinous Effects which their Slaughter or Captivity have produced to this Nation, are Inſtances more than ſufficient to Counter-ballance all thoſe adduced by that Gentleman, and to convince

(a) *Lib.* 3. *Cap.* 14.

convince ſovereign Princes how great a Risk their Subjects run, by expoſing (except in the two fore-mentioned Caſes) the Breath of their Noſtrils, to the uncertain Fate of a Campaign. But I proceed.

6. The *Duty* then of a General being ſo difficult, and his *Truſt* ſo great, the Choice of a fit Perſon for ſo important a Station, is undoubtedly a Matter of greateſt Moment to a Prince. For on the Commander certainly hangs both the Fortune and Force of an Army; and an accompliſhed General will never want able and skilful Officers, and gallant and obedient Soldiers. Yet this Fitneſs for the Office (eſpecially ſince Fire Arms came to be uſed) is not at all to be meaſured (even in any Officer, far leſs a General Perſon) by the Stature of the Body; nor is it any Advantage to a Commander to be *a Saul among the People*: For ſince no bodily Strength, nor Armour either, is Canon Proof, a General may be thought robuſt enough, who is able to endure Labour, Hunger, Cold, Heat, Watching, long and weary Marches, *&c.* without much impairing his Health.

7. But to ſpeak more particularly, tho' it will not be needful (nay, ſcarce poſſible) to run over all the Qualifications that are either *neceſſary* or *uſeful* in a Commander in Chief; yet I ſhall name ſome general Accompliſhments, the Want of any of which, do readily

readily prove pernicious both to himſelf, and thoſe he commands. And this I find done to my Hand by *Cicero* (*a*), who in a Captain General requires theſe four Qualifications, *viz. Knowledge of martial Affairs*, *Vertue*, *Authority*, and *Succeſs*.

8. As to the firſt of theſe, that a more than ordinary *Knowledge* and Acquaintance with martial Affairs, is indiſpenſibly required in a General, can ſcarce be denied. For how ſhould he know to *command* aright, that knew not firſt how to *obey*? or be a *Teacher* of others, of what himſelf never *learn'd*? and tho' *Vegetius* that great Maſter of the Theory of this Art, had not told us (*b*), yet common Reaſon and Experience do, That as Knowledge in the *Theory* of any Art, gives Confidence and Boldneſs in the *Practick*, ſo a complete Skill of the Art of War is, if not the *Parent*, yet the *Nurſe* of all true Bravery; nor generally ſpeaking, will a Man fear to put in Execution what he is ſure he had exactly learn'd. Whereas if he be an utter Stranger to the Trade, his Confuſion and Conſternation during an Action, can ſcarce fail to be pernicious to his Army. This ſeems to have been well underſtood by the ancient Poets, the raſh Attempt of *Phaeton* to guide the Charlot of the Sun, very

(a) *Pro* Lege Manilia. (b) *De Re milit. Lib.* I. *Cap.* I.

very lively pointing out the Hazard of committing the Conduct of an Army to a raw and unskiful Commander; of the direful Effects whereof, Hiſtories of all Ages are full. And indeed to deny this, were to condemn almoſt all the received *Rules* of *humane Life*, which generally have this for their *Ground-work*, That Men muſt paſs through the *firſt Principles* and *loweſt Rudiments* of any Art, before they can arrive at its Height. Men ſerve *Apprenticeſhips* to Trades, and think not themſelves the firſt Day *Maſters* of their Craft, and certainly the Skill of commanding Armies is not the eaſieſt of all Trades or Sciences, but will require at leaſt ſome Time of *Initiation*.

9. This *Knowledge* of military Buſineſs is acquired, as I have now hinted, either by that beſt of School-maſters, *Experience*; or by *ſtudying* ſuch Authors, as have written upon that Subject *(a)*; but eſpecially by diligent reading of *Hiſtory* ancient and modern. As to Experience, it is indeed the ſureſt Method of acquiring Knowledge in this noble and uſeful Science; nor is it poſſible for a Man who perhaps never ſaw an Army, be his Study what it will, to be able to command one: Yet in this degenerate Age, there want not

(a) *Of whoſe Names* Naudeus *gives us a full Liſt, de ſtudio milit. Lib.* 2. C. 4.

Inſtances of ſome, who without ever ſeeing Powder burnt in earneſt, have been advanced to be *Commanders in Chief*, and of many who at leaſt have been *General Perſons* in Armies; which is not only to the great Diſcouragement of experienced Officers, to whom ſuch Men have been moſt unjuſtly and undeſervedly preferred, but to the great Hazard of thoſe under their Command, and evident Detriment to the Publick. And whereas Men ſerve long Apprenticeſhips to other Trades, theſe have become Soldiers, nay Generals too, in a Moment.

10. But tho' *Experience* be juſtly reckoned the beſt Maſter, becauſe it repreſents to us a much livelier Proſpect of what's to be done, than reading of Books can afford; yet becauſe in the Art of War (as in all other Sciences) new Inventions are daily brought to Light; and it being rare to ſee an Opportunity preciſely clothed with the ſame Circumſtances, offer it ſelf twice to a General. And *Laſtly*, Conſidering the Brevity of Mens Lives, ſo that the hundreth Part of Accidents, that may, and do daily fall out in a Battel or Siege, can never fall within the Compaſs of one Man's Experience; it will therefore be very proper for a Captain General to make Uſe of that of others, which he can beſt do by reading Books, eſpecially Hiſtory, whereby he may in a very ſhort

Space

Space acquaint himſelf with whatever has befallen the wiſeſt and moſt expert Generals of all former Ages; and ſo may either from their Miſcarriages and Miſadventures, learn to evite the Rocks they ſplit upon; or from their well contrived and ſuceſsful Attempts, be taught how to demean himſelf in the like Circumſtances, and follow *Examples* till himſelf become *exemplary*. A memorable Inſtance of this we have recorded by *Cicero* (*a*), who tells us, That the *Roman* General *Lucullus*, when going to command their Army againſt *Mithridates*, went out of *Rome* intirely a Stranger to the Art of War, yet by ſedulous Converſe and indefatigable reading Hiſtory by the Way, he became, by that Time he entred *Aſia*, one of the moſt accompliſhed Generals in the Age he lived in. But whatever a Commander's Experience, and Learning too, may be, yet ſtill it will be his Intereſt, to have others about him, of whoſe Fidelity, Knowledge, and Experience he is ſatisfied, with whom he may upon all Emergencies adviſe.

11. To this exact Knowledge of the Art of War, it will be very proper, in Order to denominate a Man an accompliſhed General, to ſuperadd that of *other Arts* and *Sciences*. For

(a) *Lib.* 4. *Accad. Quæſt.*

tho' ſome late Writers (*a*), have very magiſterially told us, (and the Fancy, how rude and ridiculous ſoever, gains but too much Credit among our modern Soldiery) that Learning emaſculates the World; and that the ordinary Effect of Mens endeavouring to acquire ſomething of univerſal Learning, is, That they but arrive at a very ſuperficial Knowledge of that, which is their proper Work, that ſtudying which requires a retired Life, can ſcarce be accompliſhed amidſt the confuſed Noiſe of War; yet certainly both Reaſon and Experience will inform us, That the Knowledge of other Arts and Sciences does greatly conduce to the Accompliſhment of a Commander, and that *univerſal Learning*, mixt with the Knowledge of the Art of War, does mightily recommend a General Perſon. For, as ſuch a Knowledge naturally tends to the ſharpening and ſublimating his natural Parts, and by frequent Exerciſe of the Faculties of his Mind, makes him acquire a Readineſs at inventing new Artifices for benefiting thoſe he ſerves, and annoying the Enemy, (wherein a *Generaliſſimo* ought conſpicuouſly to outſtrip all thoſe under his Command) ſo alſo, it would be conſidered, That moſt Parts of Sciences are ſo cloſely linked together, that one cannot well be underſtood, nay ſcarce ſubſiſt

(a) *As* Naudeus *de Stud. milit. Lib.* 2. *Cap.* 2.

ſubſiſt, without Help of the reſt; nor can ever a Man be at all eminent in any one, who has not at leaſt ſome Taſte of many others. And if Inſtances of univerſally learned Generals were as needful as they are numerous, Hiſtories of both ancient and modern Times, would afford us Abundance. Nay, in general we read, that among all the illuſtrious Captains that have rendred ancient *Greece* and *Rome* ſo famous to Poſterity, there is ſcarce one to be found, that had not applied himſelf to the Study of Letters. Nor muſt we be ſo injurious to the modern Times, as to deny that (however in other Things degenerated) in our own and our immediate Fathers Memory, many great Captains have appeared on the Stage of *Europe*, of whom without *Hyperbole*, it might be ſaid, That it's hard to determine whether they excelled moſt in *Arts* or in *Arms*.

12. Among other Sciences, the Knowledge (as has been already obſerved) of both *General* and *Particular* Hiſtory, is eminently uſeful to a Commander to which he may very profitably ſubjoin the Study of the Principles of the *Municipal Laws* of his Country, but chiefly of the general *Law of Nations*, for which he will have daily Uſe, eſpeeially in a foreign War. Next to theſe, his Acquaintance not only with the *Latine* Tongue, but with the modern *European* Languages, will be

ſingularly uſeful to him upon all Occaſions And tho' the *Metapyſicks*, *controverſial Divinity* &c. be a little out of his Road, yet it were eaſie to evince how greatly the Knowledge of *natural Philoſophy*, but chiefly of ſome practical Parts of the *Mathematicks*, do conduce to make up a complete General. Among theſe, *Geography*, both for the Eaſineſs, Pleaſure, and Profitableneſs of the Study, is deſervedly preferred. But beſides the general Knowledge of the Situation of the Parts of the *Terraqueous Glob*, an exact Acquaintance with the *Coaſts* and *Country* which is the *Seat of the War*, is very uſeful, if not abſolutely neceſſary for any General Perſon. And for this ſome do chiefly recommend the Uſe of *Hunting*, *Hawking*, &c. theſe Exerciſes being not only *honourable*, but in their own Degree ſomewhat *neceſſary* for an eminent Commander. Of this *Virgil*, Eneid. 9. affords a notable Inſtance, where he introduces *Niſus* undertaking an Attempt indeed very deſperate, yet thus animating *Eurialus* to be his Companion in the Undertaking, and the *Trojans* to hope well of the Event:

——— *Nec nos via fallet euntes:*
Vidimus obſcuris primam ſub Vallibus Urbem
Venatu aſſiduo, & totam cognovimus Amnem.

And indeed ſcarce any Thing can give a Man a truer *Topographical Knowledge* of a Country,

Country, or make deeper Impreſſions of it on his Memory, than the Uſe of ſuch Recreations. Beſides that, when once he has thorowly acquainted himſelf with the Situation of one Country, he can with ſo much the greater Eaſe, arrive at the Knowledge of any other; all Countries and Coaſts having ſome Kind of *Proportion* and *Conformity*.

13. Next to Knowledge in *Martial Affairs*, ſucceeds that comprehenſive Indue-ment, *Vertue*, one of the great conſtitutive Parts whereof, is, *Piety*, as it comprehends the Whole of *practick Religion*. And certainly, by how much a General is more expoſed to Variety of Hazards than moſt other Men, ſo much ought he to be careful to outſtrip others in the Practice of Piety. And in this even the Heathens have ſet us a noble Copy: For *Roman* Hiſtory tells us (*a*), That their Conſuls, when marching out with the Army upon an Expedition, went firſt in a Kind of ſolemn Proceſſion to their Temples, and there made publick Vows and earneſt Prayers, to *Jupiter Latialis*, *Juno Soſpita*, &c. for Succeſs; nor were they, when that had crowned their Endeavours, at all forgetful of their Duty; their Altars being never ſo loaden with Sacrifices, offered up by their Generals, as upon ſuch

(a) *Alexr. ab* Alexandro *Genial. Dier. Lib.* 3. *Cap.* 3.

ſuch Occaſions. And certainly our *Chriſtianity* is very ill beſtowed upon us, if our modern Commanders have fallen ſhort (as it's much to be feared they have) of ſo *native* a Piece of Religion. However, certain it is, that beſides the *eternal*, there is alſo *intermedial* and ſecular Reward for *true Piety in a General*; his own Example being the ſtrongeſt Perſwaſive to thoſe he commands: And how conducive it is even towards the Succeſs of a War, to have the Fear of GOD imprinted on Soldiers Minds, is too evident to be told.

14. Next to *Religion*, a Commander's Virtue chiefly conſiſts in an *undaunted Courage*, and *unſhaken Conſtancy* and *Preſence of Mind*, amidſt the moſt formidable Dangers; and then, a *Readineſs* freely and cheerfully to undergo all thoſe Toils and Hardſhips himſelf, which he injoins and impoſes upon others. For certainly a ſoft and effeminate General, can never expect to find brave and gallant Soldiers; and therefore let him never look for great and glorious Atcheivements from them, till firſt he ſet them an eminent Copy, by his own Deportment. In like Manner, if a General expect an undaunted Courage and Reſolution in Soldiers, let his own generous Example invite them to it, let him (in Caſe of any Ingagement) appear on the Head of his Army, and whenever elſe his Preſence ſeems needful, be the

Hazard

Hazard what it will *(a)*. It's incredible how advantagious a Commander's Preſence is, nor is Death by half ſo terrible to a Soldier, when in his General's View, as elſe where; neither any Thing ſo prevalent with them, as the Sight of his gallant Behaviour; for in this, as in moſt of other Things, one Example is far more inſtructive than many Precepts: *Si quid* (ſays *Livy*) *(b) injungere Inferiori velis, id prius in te ac tuis ſi ipſe ſtatueris, facilius omnes obedientes habeas.* Yet here ſtill it will be neceſſary to adhibit a Mixture of *Prudence*; the Loſs of a General proving often fatal to the Army. In ſhort, *deſperate Caſes* are now a Days thought the only proper Seaſon, for this perſonal Bravery in a General.

15. But our Obſervation ends not here: *Virtue* in a Commander is a *comprehenſive Quality*, including many Particulars. And in the firſt Place, it implies *Prudence* and *Conduct*; which generally ſpeaking, conſiſts in a diligent procuring and doing whatſoever has a Tendency towards the deſtroying or annoying the Enemies Forces, and preſerving and incouraging his own. This Conduct (to be more particular) will teach him, in all Dangers and Difficulties, to put the beſt Face he can upon Affairs, and to be cheerful, and to hope well (at leaſt appear to the Soldiery

(a) *L.* 12. §. 2. *ff. de Re milit.* (b) *Lib.* 26.

Soldiery to do ſo) even when there is but little Ground for it: Since if his Deportment betray the leaſt Shadow of Fear or Confuſion, he can ſcarce look for any worthy Performance from thoſe under him.

16. By this *Prudence* and *Conduct* he alſo through a ſagacious *Retroſpect* to what is paſt, and careful *Inſpection* of the preſent State of Affairs, does eaſily *foreſee*, what will be uſeful and expedient, and what noxious and detrimental for the *Future*. By this he nicks the proper Time of Action, and is enabled to adhibit *ſudden* and *extemporary* Remedies, to dangerous or deſperate Caſes; and manages all by mature and deliberate Counſel. And indeed, for this very Reaſon is a General placed in ſo eminent a Station, that thence as from a Watch-tower, he may ſee Hazards afar off, and be ready by his indefatigable Pains, to meet them in the Frontiers, and provide for the Safety of thoſe he commands. But then all this will ſcarce be poſſible for him, unleſs he be acquainted not only with his *own*, but even in a great Meaſure with the *Enemies* Strength, nay with the Genius and Qualities of their *General*. Moreover, this prompts him to be anxiouſly careful, that *Proviſions*, *Arms*, *Ammunition*, &c. be never wanting; and above all, to be ſure that his Army be kept

kept in daily *Exerciſe (a)*, and under the ſtricteſt Diſcipline. For thus we read that the military Fame the *Romans* had in the World, was mainly atchieved by the exact Diſcipline of their Camps, inuring their Soldiers to Labour and Hardſhip. And, as *Tacitus* tells us, when a *long Peace* had ſlacked the Reins of Diſcipline, that *active Humour*, which was wont to be ſpent on the Enemy, recoiled, and flew in the Face of their Commanders, begat nothing but *Mutinies* and Diſorders.

17. Further yet, the Experience of all Ages having atteſted, that ſuch military Actions as upon mature Deliberation, have been *reſolved upon*, are quickly and ſuddenly to be put to *Execution*, (which as *Cicero (b)*, tells us, was the wiſe Opinion, and conſtant Practice of *S. Aphricanus* and *Ceſar*) a wiſe and prudent General will be ſure to take Care, that all *needleſs Perſons* and *ſuperfluous Baggage*, be removed out of the Army; that ſo their March be nowiſe impeded or retarded. The great Advantage of this Way of Managing a War, was, it ſeems well underſtood by *Alexander*, who when going upon his Expedition into *India*, firſt cauſed ſet on Fire all his own Baggage

(a) *L.* 12. §. 2. *ff. de Re milit. L.* 4. 6. *C. de Offic. Magiſt. milit. L. fin.* §. 9. *C. de Offic. Præfect. Pretor.* Afric. (b) 7. *in* Verrem, *&* *pro* Marcello.

Baggage and Plunder, and then that of the whole Army (*a*). And *P. Decius* in a like Caſe as *Livy* tells us (*b*), obliged his Soldiers to ſell all their Plunder in the Neighbourhood. Nay, *Ceſar* when tranſporting his Army from *Sicily* to *Afric*, would allow nothing to be imbarked, but the Men and their Arms (*c*). Which rare Examples were in the laſt Age moſt wiſely and ſucceſsfully followed, by that great General *Maurice* Prince of *Orange*.

18. This Conduct alſo will teach a General, not to be forward in putting Truſt in ſuch *Traitors* and *Deſerters* as come over from the Enemy, or giving too much Head to their Informations or Counſels. And indeed it was no unpolitick Remonſtrance of the Lords of the *Philiſtines* to *Achiſh* their Maſter, againſt allowing *David* to go with them on the Expedition againſt *Iſrael*; *leaſt*, ſay they, *in the Battel he be an Adverſary to us: For wherewith ſhould he reconcile himſelf unto his Maſter? ſhould it not be with the Heads of thoſe Men?* (*d*) And ſo the wary *Romans* being taught by the Miſadventures of others, were always in Uſe to place *Renegados* unarmed in the Rear of their Army; leaſt by a ſimulate Flight, they

(a) Curt. *Lib.* 6. *Cap.* 6. (b) *Lib.* 10. (c) Panſa *de Bell.* Aphric. *Cap.* 47. (d) 1 Sam. 29. 4.

they ſhould do more *Harm*, than all their real Service, could be *beneficial* (*a*).

19. Moreover, a General indued with Prudence and Conduct, will wiſely ponder and conſider, whether he can ſafely confide in his auxiliary Troops; and will never bring his Army to run the fatal Hazard of a Battel, when he finds them under any Apprehenſion, or poſſeſt with the leaſt Diſtruſt of a Victory; for the ſureſt and ſaddeſt Prognoſtick of Miſcarrying is *Deſpair*, nor will Men readily be *victorious*, who think it impoſſible for them to *prevail*.

20. But on the other Side, if the General himſelf find it inconvenient or dangerous to hazard a Battel; he will beſt evidence his Conduct (tho' the Soldiers be impatient for it) to divert them from that raſh Inclination; nay, when Words prevail not, even to ſuffer ſome of them to be cut off by the Enemy.

21. *Laſtly*, He will take Care, never to reduce a fleeing Enemy (unleſs their Numbers be very contemptible) to ſuch a Strait, that there is no Way left them to eſcape. *Nullus pernicioſior Hoſtis eſt*, ſays *Seneca* (*b*), *quam quem audacem Anguſtiæ faciunt*; and both ancient and modern Hiſtory are full of Examples of thoſe who by reducing their Enemy

(a) Alexr. *ab* Alexandro *genial. dier. Lib.* 4. *Cap.* 7.
(b) *Lib.* 2. *Nat. quæſt. Cap.* 59.

my to ſuch a Strait, have inſtead of a *Triumph*, met with a *Defeat*. Nay, Men in ſuch a Condition have been driven to that Height of Deſpair, that they have rather choſen to deſtroy themſelves, their Goods, *&c.* (as *Sardanapalus* and the *Numantines* did *(a)*, than fall into the Hands of a mercileſs Enemy. And this was ſo well underſtood by the *Roman* Generals, that when their Armies mainly conſiſted of raw untrained Men, who would be ready to give Ground, they induſtriouſly uſed to lead them into Paſſes ſurrounded by the Enemy's Forces; ſo that no Safety was to be expected in their *Heels*, but in their *Hands* only.

22. But if in ſuch a Caſe we ſhould ſuppoſe, that an Enemy ſurrenders at Diſcretion, yet even here neither *Piety*, nor ſo much as *Prudence* and *Conduct*, will allow a General to proceed to the outmoſt of Severity; an Example of this Kind not only rendering him hateful to God and Man, but deterring others from ſurrendering: For it's very natural to all Men, rather to truſt to their own Strength, how ſmall ſoever, than tamely to give up themſelves to the Will of a barbarous Enemy. In ſhort, it's a Mark of a degenerous Spirit, to inſult and tyrannize over an unreſiſting Patient; but to ſpare a yielding Enemy, intitles

(a) Juſtin. *Lib.* 1. *Cap.* 3. Florus, *Lib.* 2. *Cap.* 18.

titles a Man to the truly noble Epithet of *Clement*.

23. That which in the third Place I mentioned as an eminent Accompliſhment of a General, was *Authority*; whereby he can govern an Army, how numerous ſoever, with a Nod, and by his very Looks ſtrike in them an awful Regard to his Perſon: For his Authority being once ſunk, and his Perſon rendered cheap and contemptible with the Soldiery; 'tis more than probable their Inſolence will not ſtick there; but that at length, *Actæon* like, he will be devoured by the Beaſts he feeds.

24. In Order therefore to the keeping up this *Authority*, a Commander in Chief is above all Things to take Care, That his Army be duly paid; the Neglect whereof has often proved fatal to Princes and Governments. This was ſo well known to the *Romans*, that when Money was wanting, they ſtuck not to melt down even the conſecrated Plate in their Temples, for preventing Mutinies in the Army *(a)*. Beſides, that this is not the only Inconveniency ariſing from an Army's wanting Pay; it being ſcarce poſſible for the wiſeſt or ſterneſt General, to reſtrain hungry armed Men, from pillaging indiſcriminately Friends and Foes; whereby the firſt are neceſſarily

(a) Valer. Maxim. *Lib.* 7. *Cap.* 6. *N.* 4.

ceſſarily *diſobliged*, and tempted to betray us, and thereby the Hands of the *others* ſtrengthned.

25. Further, If a General would preſerve his Authority, he is carefully to avoid giving the leaſt Umbrage of *Colluſion* or *Correſpondence* with the Enemy: For in all Armies there are never wanting Men of a malevolent and envious Spirit, whoſe Work it is to leſſen and obſcure, or at leaſt miſ-interpret the Actions of great Men; and if they have any Colour, tho' never ſo falſe, for what they ſuggeſt, farewel to a General's Reputation for ever: And this indeed renders the Poſt of a Commander in Chief extremely difficult to be managed aright, ſuch envious Rumours and Surmiſes being very ready to obtain Credit among the common Soldiery: And therefore Hiſtory tells us, That Enemies have been always very induſtrious to get ſuch Rumours ſpread, as well knowing that ſcarce any Thing can do them greater Service; and wiſe Generals have been no leſs careful, tho' much to their own Detriment, to remove the leaſt Ground of any ſuch Suſpicion. Thus *Pericles* the *Athenian* General freely gifted to the Publick his Lands which the Enemies Foragers had induſtriouſly ſpared (*a*): Which Example was long there after followed by *Fabius Maximus* the *Roman* Conſul (*b*).

26. I

(a) Juſtin. *Lib.* 3. *Cap.* 7. (b) Liv. *Lib.* 22.

26. In the next Place, *Affability*, *Gentleneſs*, and a *debonair Carriage*, greatly contributes to the keeping up a General's Authority; nothing being properer either to appeaſe Mutinies and Seditions, or raiſe the Love and Eſteem of him among the Soldiery, nor conſequently to keep up their drooping Spirits, amidſt all the Preſſures and Hardſhips they are daily expoſed to. As on the other Side, nothing more averts Mens Affections, than that ſtiff and rugged Severity, too uſual with many *Roman* Generals: *Nocuit*, ſays *Tacitus* (*a*), *antiquus Rigor*, *& nimia Severitas*. Nay, this has often proved fatal to ſome of them; the Soldiers induſtriouſly giving Way to the Enemy, to obſtruct their own General his atchieving a glorious Victory, and obtaining the Honour of a Triumph. Only here, this neceſſary Caution would be obſerved, That a General take Care, that by too much Affectation of Familiarity and Affability, he render not himſelf contemptible: But let him imitate the prudent Pattern of *Titus Veſpaſian*, who, as *Tacitus* tells us (*b*), *Decorum quidem ſe promptumque in Armis oſtendebat*, *Comitate & Alloquiis Officia provocans*, *ac plerumque in Opere in Agmine gregario Militi mixtus*, *incorrupto tamen Ducis Honore*. Beſides, we are to remember, That an Exceſs of *Courteſy*.

(a) *Hiſtor. Lib.* 1. *Cap.* 18. (b) *Hiſtor. Lib.* 5. *Cap.* 1.

ſy and *Familiarity* with common Soldiers, is very ready to raiſe Jealouſies in the Prince or State whom he ſerves; it being ſcarce *good Manners* (not to ſay worſe) in any Subject or Servant, to affect *Popularity*.

27. Very near of Kin to this is that *Military Eloquence*, which Hiſtories of all Ages tell us, hath wonderfully wrought upon the Affections of Men, and has made thoſe who before were timerous as *Hares*, become in an Inſtant bold as *Lions*, and willing to endure the greateſt Hardſhips. But this Speeching of Armies, is in theſe latter Ages of the World, much out of Requeſt.

28. *Laſtly*, That which will above all Things preſerve a General's Authority, is his ſevere and careful Abſtinence from *Incontinence*, *Intemperance*, *Avarice*, and all other mean and ſordid Vices. For what will it ſignify, tho' he defeat the Enemy, if at the ſame Time he is captivated and enſlaved by his own Luſts, and is not ſo far Maſter of himſelf, as to abſtain from the Wives, Daughters, Goods, *&c.* of Friends and Confederates.

29. The fourth and laſt Thing that ſeems to be required to the Accompliſhment of a General Commander, is *Succeſs* and *good Fortune*. And indeed it can ſcarce be denied, that a Man's being repute a fortunate Commander, does very much contribute both to the Terror of Enemies, and Encouragement of

of Friends. Yet on the other Side, it were hard, from this to pretend to take infallible Meaſures of his Skill and Conduct: For as a *Phyſician* who hath uſed all proper Remedies, may be blameleſs, tho' the Diſeaſe finally mock his Skill; ſo neither is it juſt to impeach a *General*'s Conduct, becauſe after all proper Means eſſayed, he at length be conſtrained to ſuccumb: Since Experience tells us, That Thouſands of little Accidents, which no humane Prudence could foreſee or prevent, may, and do daily fall out in the Heat of Conflicts, which will eaſily turn the Scales of Victory. Nay, in the general we may ſay, There is no one Thing wherein *Fortune* more remarkably predomines, than in War. And 'tis obvious in Hiſtory, That there are but a very few Captains, whoſe Bravery, Skill, and Conduct have always been attended with Succeſs: For of all the glorious Chiſtains of *Greece*, we read of none but *Alcibiades* and *Alexander*, whoſe Attempts Fortune always favoured; and during 700 Years, none of all the *Roman* Captains, but *Sylla* alone, obtained the Sirname of *Happy*.

30. Yet beſides thoſe Accidents which can be attributed to nothing but *Divine Providence*, there is another great Obſtructer of a General's Succeſs, that can be very eaſily removed; and that is, the *too much circumſcribing his Power in managing an Expedition*. This

the *Romans* found ſo pernicious in the Infancy of their State, that, notwithſtanding their anxious Jealouſies of the Power of ſingle Perſons, the Commiſſions of their *Conſuls*, *Dictators*, *&c.* were ever after ſo unlimited, that all that the Senate reſerved to it ſelf, (and ſometimes not ſo much as that either) was the Power of making *Peace*, or renewing the *War*: The Prudence of which Conduct will eaſily appear, if we conſider, That had thoſe Generals been tied up to adviſe with the Senate upon every particular Emergent, and thence to expect all their Orders, this would undoubtedly have rendered them ſo much the leſs circumſpect and vigorous in Execution, as knowing that as in Caſe of Miſcarriage, a Part of the *Blame* as well as the *Burden* would ly upon the Senators, ſo, in Caſe of Succeſs, they would ſhare in the Glory of the *Victory*. Beſides, that not only many unforeſeen Accidents fall out, (as I have already obſerved) but notable Advantages are often given by the Enemy, which cannot be underſtood, far leſs improven, by any but thoſe who are preſent: Whereas, when a Captain-General is intruſted with a *Cart-blanche*, all the Glory of an Expedition falls to his Share alone; which, as on the one Side, it cannot but animate his Diligence, ſo on the other, it becomes a great Motive to ſober Counſels, and Bridle of Raſhneſs. Laſtly, it's to be conſidered, That the

Oppor-

Opportunity of Execution may often be let ſlip, before Orders can come up. Yet modern States are generally ſo jealous of the Commanders in Chief of their Armies, that their Power is always very much circumſcribed; as it is at preſent at *Venice*, *Holland*, &c. which affords one Reaſon among many others, why the Territories of *Sovereign Princes* in our Days, are much more enlarged than thoſe of *Republicks*.

31. As to *Modern Cuſtoms* relating to this Title, the foregoing Deſcription I have given of a General's Duty, will fit the *preſent* as well as *ancient* Times; and what was requiſite in an expert Captain ſo many Hundred Years ago, can be no leſs (nay is much more) needful in our Days, when the Art of War is ſo mightily improven. I proceed therefore to the Methods of denouncing and managing a War.

TITLE V.

Of the Ancient and Modern Methods of denouncing and managing a War.

1. IT hath been already obſerved, Title I. That among other eſſential Requiſites to the making a War *ſolemn* and *publick*, it's required that it be duly and ſolemnly *denounced* or *proclaimed*.

2. This denouncing of War implies all lawful Endeavour of Redreſs by *fair Means*, before Men proceed to that which ſtill ought to be *Ratio ultima Regum*. And this we find was God's own Command to the Children of *Iſrael* (a), *When thou comeſt nigh unto a City to fight againſt it, then proclaim Peace unto it. And it ſhall be if it make thee Anſwer of Peace*, &c. *And if it will make no Peace with thee, but will make War againſt thee, then thou ſhalt beſiege*

(a) Deut. 20. 10.

beſiege it, &c. Neither will *Joſhua*'s Method with the ſeven devoted Nations, at all infringe the Neceſſity of a previous Denunciation of War: For tho' thoſe Nations had never in the leaſt injured the *Iſraeliees*, yet *Joſhua*'s *ſpecial Warrant* for ſo unuſual and ſanguinary a Method (which no other Man could ever pretend to) rather *confirms* than *enervates* the Rule; Nay, tho' *Moſes* had no ſuch *particular Warrant* that we know of, to make War upon *Amalek*, yet the Action was plainly thereafter approven.

3. As to other Nations, the ancient *Greeks* never entered upon Hoſtilities, without a previous ſolemn Denunciation of War by their *Caduceus* (*a*). But the *Romans* in this were *religious* to a Scruple, they having made many Laws, which were accounted a Part of the *Jus publicum*, exactly and pointedly regulating the Form and Method of *denouncing War* againſt foreign Enemies; wherein the many nice Solemnities uſed by their *Fæciales* (which may be collected from *Roman* Authors) were all contrived to point out their Unwillingneſs to proceed to violent Methods, till all fair Means were firſt eſſayed. And this by that People was eſteemed ſo neceſſary, that whoever made War without theſe or equivalent

(a) Euripid. *in* Phæniſſ.

lent Solemnities, were lookt upon as *Robbers* and *publick Graſſators*, and appointed to be treated as ſuch *(a)*.

4. But as to the Methods of carrying on a War when once fairly denounced, it's obvious from *Claſſical Authors*, That that wiſe and valiant People, during the Infancy of their State, laid down this as a general Rule, *That the Expence whether of conquering or maintaining a ſubdued Country, ſhould never exceed the Ability of their Revenue.* In Order to which, their Method was to come powerful and ſuddenly into the Field; ſo that from the Foundation of their City to the Siege of *Veii*, they never had a War that laſted above a Month; nay, ſome of them were diſpatched in far leſs Time: The Reaſon is, That being ſo well prepared, they ſought out the Enemy, and made it their main Buſineſs to bring him to a Battel, where (becauſe both of their Strength, and the Surprize) they generally were victorious. Beſides, That the Ambition of their Conſuls, was not a little contributive to the ſudden finiſhing of their Wars: For, being in Office only one Year, ſix Months whereof was to be ſpent at Home, the outmoſt Efforts of Vigour and Diligence were uſed, for diſpatching the War, becauſe till then, they could

(a) *L.* 118. *ff. de V. S.*

could not demand the Honour of a *ſolemn Triumph.*

5. Next, When the Enemy was brought low, and came to treat of a Peace, the *Romans* ſcarce ever miſt to inſiſt upon delivering up ſome Part of their Territories; the Revenue whereof was either immediately allotted to publick Uſes, or the Lands themſelves conſigned to a *Colony*; ſo that the War being in a few Days terminated to their Advantage, their new Conqueſts were maintained, without any Expence to the State; the Lands which the Colony got being in Lieu of their Pay: And on the other Side, theſe Colonies were the beſt of all Securities to their Frontiers in Time of Peace; and in Caſe of ſudden Invaſions, there was always another Army in Readineſs to protect them; and being again Victors, they were ſure to wreathe a yet heavier and ſtraiter Yoke about their Enemies Necks.

6. Yet it's evident from *Roman* Story, That in elder Times, the Lands of conquered Countries, were but very ſparingly and in ſmall Parcels, aſſigned to particular Perſons in theſe Colonies; ſo that *Livy* tells us, That after the taking of *Veii*, the Land parcelled out to each Man of the Colony ſent thither, did ſcarce exceed three Acres. The Reaſons of this ſparing Diſtribution ſeem to be, *Firſt*, Becauſe thereby they were enabled to plant them with ſo much the mo Men, whereby their

their Frontiers were likewiſe ſo much the better guarded. 2*dly*, The State it ſelf being then very poor, 'twould have been very unpolitical, to allow their Colonies to overtop them in Riches. 3*dly*, Becauſe the publick Exigencies of any Government can never be ſo liberally ſupplied by the Extent, as by the Improvement of Ground.

7. But at the Siege of *Veii*, the ancient Method was ſomewhat altered: For then they firſt began to allow Pay to their Army, which before was needleſs, their Wars being generally of ſo ſhort a Continuance: Yet even after that, they ſtill endeavoured to finiſh it with all Expedition, and for many Years, as much as was poſſible, obſerved the ſame Rules; ſave only, that they made ſome Innovations in the Method of diſtributing the Prey and Plunder; for the Proportions that fell to the common Soldiery, became thereafter a great Deal leſs than formerly: The Reaſons whereof were, *Firſt*, After their Armies were uſed to receive Pay, there was no Ground for their Share of the Plunder to be ſo great as formerly, when they had nothing elſe to expect. 2*dly*, As their Territories were enlarged, ſo the Spoils became proportionally greater; wherefore it was but juſt the State ſhould have its Share, the publick Exigences being neceſſarily alſo increaſed; ſo that without this, they would have been conſtrained, upon ſome new

new Expedition, to impoſe new Taxes upon the People.

8. But by theſe Means their Coffers being quickly filled, the *Roman* State ſuddenly inriched it ſelf by War, (which, except a *modern upſtart Republick*, impoveriſhes all other Nations) and *Salamander* like, grew to a prodigious Corpulency, by feeding upon Flames; till at length they became ſo ambitious of augmenting the publick Revenue, that no Conſul was allowed to triumph, unleſs he had returned loaden with great Riches to the Treaſury.

9. But if on the other Side, Fortune frowned on an Attempt, they were far more tender of diſgracing their Generals, than any other People. For if the Miſcarriage was malicious, (as it rarely was) their Puniſhment was never ſevere; but if it fell out through Miſtake or Ignorance, (far more, if by meer Chance of War) they were ſo far from Revenge, that many Times they crowned the improſperous Undertaking with ſingular Marks of Honour. Thus, when *Terentius Varro* had by his own Folly and Raſhneſs loſt the famous Battel of *Cannæ*, and thereby well nigh put a Period to their flouriſhing State, the Senate nevertheleſs met him without the City in their *Formalities*, and returned him the publick Thanks, *Quod de Salute Reipubl. non deſperaſſet.*

10. As

10. As to the particular Methods of ordering *Field Battels*, by fighting in three Bodies, *&c.* having had a properer Occaſion of treating that, *Tit.* 3d, I ſhall refer the Reader thither; and only here ſubjoin ſomething touching the ordinary *Roman* Way of taking Towns.—And this they did either by *Storm* or *Surrender*. The firſt of theſe was performed either by *open Force*, or by *Stratagem*.

11. *Open Force* was a general Attack, without firſt uſing Battery; and this they called *Aggredi Urbem cum Corona*, becauſe their Army being drawn round the Place, they made an Attack at all Quarters at once; which proving ineffectual, they next fell to battering the Walls with *Rams*, and other great Engines; or made Uſe of *Mines*, and ſo entered the Place under Ground, or builded *wooden Towers*, raiſed *Mounts*, &c. By a *general Attack* the beſieged run the greateſt Risk, not only Bravery but Numbers of Men being then indiſpenſibly neceſſary. But if all thoſe Methods miſcarried, the *Romans* were rarely at the Expence of a formal Siege: The Reaſon whereof ſeems to lie in their Unwillingneſs to loſe their own Men; and yet in Caſe of a Siege, their Quarters being to be extended, and Guards ſet round the Town, they muſt neceſſarly be weak in ſome Places, and therefore unable to reſiſt, if the Beſieged ſhould make

make a brisk Sally, whereby their Army was much indangered.

12. Their *Methods* of *Defence*, when Walls were battered, were much the ſame as now a Days (giving always ſome Allowance to our modern Uſe of Fire-Arms) by repairing the Breaches, *&c.* Their Way of diſappointing Mines, was by *Counter-mining*, *oppoſing their Perſons*, or diſturbing the Enemy by their Inventions, ſuch as by putting Feathers, Oil, *&c.* into Barrels, ſetting them on Fire, and tumbling them among the Beſiegers. As to the *wooden Towers*, theſe they deſtroyed by throwing Fire in to them, and the *Mounts* by digging under the Walls, and ſtealing away their Earth, looſing the Foundations of the Mount, *&c.*

13. As to *Stratagems*, they rarely attempted any Place that Way with Succeſs. And indeed Experience tells us, That ſecret Correſpondencies, whereby ſuch Attempts are atchieved, as they are eaſily detected, ſo the leaſt Diſcovery not only ruins the whole Deſign, but frequently indangers a great Part of the Beſiegers Army. Nay, tho' they ſhould be concealed in the *Managery*, yet rarely do they eſcape being diſcovered in the *Execution*. For if the Advance be made but a few Minutes either too ſoon or too late; if the leaſt Diſorder or Noiſe be made, nay Error or Miſtake committed, the whole Project (and commonly

commonly the Undertakers too) muſt fall to the Ground. Beſides, that it is obvious, that ſuch Attempts being for the moſt Part made in the Night, the very Darkneſs alone, will be ready to ſtrike Terror in the Executers, eſpecially if they be (as commonly they are) utterly unacquainted with the Places or Perſons to be attacked.

14. The taking by *Surrender*, was either of *free Conſent*, ſuch as upon ſome extrinſick Neceſſity, or Deſire to be under a better Government, both which Reaſons (according to *Livy*) prevailed in the Surrendery of *Capua*; or it was by Force, ſuch as by Fatigues of War, loſing Battels, *&c.* And in this Method, above all others, the *Romans* were moſt fortunate, having ſometimes conquered a whole Kingdom in a Day; whereas ſingle Towns that made a ſtout Reſiſtance, have often coſt them ſeveral Years. To prevent which Obſtinacy or Deſpair, they were generally careful in Sieges, to take away the abſolute Neceſſity of fighting from the beſieged, by offering them Indemnity, Liberty, *&c.* Thus the famous *Camillus* at the Storm of *Veii*, gave Orders (with ſo loud a Voice that the beſieged might hear) that none ſhould be in the leaſt injured, who threw down their Arms; and by this Means the City was taken with ſo little Loſs, that to this Day the Method is uſed by moſt Commanders.

15.

15. But there is yet one general Maxim, I find religiouſly obſerved by the *Romans* in managing their Wars, to wit, that they took ſpecial Care, that the greateſt Strength of their Armies ſhould conſiſt in their *own Men*, and truſted but little to *auxiliary Forces*; (of which I have ſpoken *Tit.* 3d) this Courſe being undoubtedly the ſafeſt, even tho' among them, Auxiliaries were always ſent from ſuch Confederates, as had alſo ſome Dependence leſs or more upon their State. But of this I ſhall further treat in the latter Part of this *Title*.

16. *Laſtly*, The beloved Method of ſome Princes and States, for keeping a reduced Country in Obedience, *viz.* to build Cittadels, Caſtles, *&c.* was never in Uſe among the *Romans*; the Reaſons whereof, becauſe they conclude much ſtronger now than in thoſe elder Times, I ſhall lay down in delivering the

Modern Cuſtoms relating to this Title.

17. In our Days *Denunciations* of War are not by half ſo ſolemn, as of old they were; for we are not ſo nice as to make any ſolemn Pro-

Proclamation in the Enemies Country, which the *Romans* never failed to do. Only this is commonly obſerved, That beſides the *Denunciation*, *a Declaration* or *Manifeſto* is alſo publiſhed by the *Aggreſſor*, wherein he endeavours to vindicate the Juſtice of his Procedure.

18. Yet a Denunciation in ſome Form or other, has, in all Ages, and to this Day, been thought neceſſary: For even in the Caſe of Violence offered to the Perſon of an Ambaſſador (the greateſt of all Provocations) the War, according to *Grotius*, ought ſtill to be denounced, tho' but by a Letter, or ſome ſuch Way; which has been always obſerved of late: And tho' we read of no ſuch previous Civilty uſed by *David* to *Hanun* the *Ammonite*, yet, ſince neither do we read of any Thing to the contrary, it's more than probable, that ſome Denunciation did interveen.

19. But here we are to remember, That a War being ſolemnly denounced againſt a Prince or State, it's underſtood, even in our Days, when Confederacies uſe to be among Equals and independent Princes, to comprehend not only all his *Subjects* and *Vaſſals*, but his *Allies*, *Confederates* and *Auxiliaries*; ſo that there is no Neceſſity to make a ſeparate Denunciation againſt thoſe. Yet the War being once ended, if we are to make a new one upon a Prince or State, for having been Aſſiſtant to our Enemies in the former, then a *De-*

a *Denunciation* becomes *needful*, that Prince being now no more conſidered as an *Acceſſary*, but as a *Principal*.

20. The true Reaſon why a *ſolemn Indiction* of War is required, (and which keeps it in Uſe even in our Times, when Ceremonies of that Kind are leſs regarded) is not (as many think) that it may appear that the Aggreſſor is not to ſteal an Advantage, or ſurprize his Enemy, (that being rather Point of *Honour* than *Law*) but the Ground is, that it may be evident to the World, that the Undertaking is not a *raſh Adventure* of *private Men*, but a *deliberate* Act of the *Prince* or *People* on both Sides; whence (as I have obſerved *Tit. 1ſt*). ariſe peculiar Effects, which nowiſe take Place in a War againſt Pirates, or Robbers, or in Caſe of inteſtine Diſcords.

21. As to the general Rules I have mentioned, which the ancient *Romans* laid down in managing a War, it's plain that the Situation of the Affairs of *Europe* theſe ſeveral Ages paſt, has rendred them impracticable: For now it's no ſtrange Thing to ſee a War intailed upon Poſterity; at the End whereof Parties do often agree, to reſtore *hinc inde* what they had with ſuch irreparable Loſs acquired.

22. Planting *Colonies* alſo in conquered Countries, is now a Days quite out-dated. But as to paying Soldiers and other Charges

of the War, that is ſo immenſe an Expence of Money, that it's now become a common *Aphoriſm* in the Mouths of Princes and Stateſmen, *That Money is the Sinews of War.* Yet *Matchiavel* and other modern Writers have very juſtly expoſed this Opinion. For indeed, if we would attentively compare Hiſtory with our own Obſervation, it will pretty evidently appear, That brave and well trained *Soldiers*, are the true *Sinews of War*; nor need we to condemn *Solon* for queſtioning that Felicity of *Creſus*, which he expected the Philoſopher ſhould have admired; if we conſider, that Money by it ſelf can never find good Soldiers, whereas good Soldiers can never miſs to find Money. It cannot indeed be denied, that Money is *neceſſary* to the managing a War, but not *principally* and in *the firſt Place*; for good Soldiers have often been contented without it, tho' it has been rarely ſeen that they wanted it: In ſhort, it's as impoſſible for good Soldiers to want Money, as it's for Money alone, to make good Soldiers: For otherwiſe *Darius* would have conquered *Alexander*, the *Greeks* the *Romans*, &c. And here *Matchiavel* takes Notice of it as very remarkable, that *Livy* while ſtating the Queſtion, What would have been the Event if *Alexander* had turned his Arms againſt the *Romans*? he lays down this Poſition, That in War there are three Things fundamentally neceſſary,

neceſſary, *viz.* good Soldiers, good Commanders, and good Fortune; and after a long Diſcuſſion of the Queſtion, whether *Alexander* or the *Romans* were moſt valuable as to theſe three, he concludes, without the leaſt Mention of *Money*. But to return.

23. In our Days alſo, we have ſcarce any Inſtances of *Generaliſſimo*'s their being puniſhed for Miſcarriages, except at the *Ottoman* Port, where the Fear of the Bow-ſtring (as is obſerved by our modern Politicians) has within theſe 100 Years, more obſtructed the Progreſs of the *Grand Seignior*'s Arms, than all the Chriſtian Armies put together.

24. Moreover, what has been ſaid of our modern Methods of fighting in a far different Manner from that of the Ancients, may be here repeated, as to what is above ſpoken with Reſpect to Sieges. Only the old general Rule of *keeping Enemies from deſpairing*, is ſtill in Uſe, ſo that now a Days it's always one general Article in Capitulations with Towns, That their Religion, Form of civil Government, their Liberties, Properties, *&c.* ſhall be preſerved.

25. As to *Auxiliaries* in our Days, theſe are not, for the moſt Part (as among the *Romans* they were) ſuch Contingents of Men as were impoſed on Countries, who being ſenſible of their own Weakneſs, had made a diſadvantagious Peace; but they are ſuch

Troops, as a confederate free Prince or State ſends under their own Officers and Pay, to the Aſſiſtance of another; the Numbers whereof are commonly determined by previous Agreement. And in this Notion, I cannot but ſubſcribe to the Opinion of *Machiavel* and other learned Men, That of all Soldiers none are generally imployed, with ſo much Hazard to the People whom they aſſiſt; providing they be wholly, at leaſt mainly relied upon, For, *Firſt*, Neither Officers nor Soldiers receiving your Pay, it's ſcarce to be expected that they will much regard either your *Intereſt* or *Authority*; but the Expedition being ended (nay often ſooner) will be ready indiſcriminately to plunder Friends and Foes: And if our own ſad and late Experience in this Nation did not ſuperſede the Uſe of Examples from Hiſtory, innumerable Inſtances could be given from thence, which do ſadly atteſt, That for one Caſe wherein ſuch Auxiliaries did good, there are hundreds in which they did much Miſchief. 2*dly*, Long Experience hath taught the World, that there can ſcarce be a more commodious Occaſion offered to an ambitious Prince or State, of poſſeſſing themſelves of a neighbouring Nation, than when invited in this Manner to its Aſſiſtance and Defence. Of this the Conqueſt of *England* by the *Saxons* is a pregnant Inſtance, that People having been only

only at first called over in small Numbers, to the Assistance of the *Britons* against the *Scots*, but being once charmed with the Goodness of the Country, and animated by the Ignorance and Pusillanimity of the Inhabitants, never ceast pouring in new Colonies upon them, till they made an absolute Conquest, and in stead of *auxiliary Allies*, became *insulting Conquerours*, and drove the poor *Aborigines* into a barren Corner, where to this Day they remain a melancholly Warning for all Princes, to beware of the Treachery of *Auxiliaries*.

26. *Lastly*, As to building Castles and Cittadels in a conquered Country, that Method is generally out of Fashion, except upon the Frontiers, or in Countries which are almost constantly the Seat of War, such as *Hungary* and the *French* and *Spanish Netherlands*, where the Frontiers are so often altered, that there is scarce an inconsiderable Place, but is now regularly fortified.

27. But in the General we may safely affirm with the above cited Author, That the building these in a conquered Country, is neither safe nor convenient: For they are either erected to keep *Subjects* in Obedience, or to repel an *Enemy*. In the first Case they are *dangerous*, and in the other *unnecessary*.

28. As to the first, it's to be considered, That the only Fear of a Rebellion proceeds

from a Peoples *Averſion* and *Hatred* of their Prince, which generally flows from his *Injuſtice* or *Oppreſſion*; and he is ſaid to be unjuſt when he governs arbitrarly, which is never ſo manifeſt as when he builds Caſtles, and Cittadels in the Country. Beſides, that ſince the Invention of Gun-powder, the erecting them ſeems altogether uſeleſs.

29. As to the ſecond Caſe, they are undoubtedly *unneceſſary* where there is an Army in the Field; and if there be none, they are yet more *uſeleſs*: A good Army without ſuch Helps, is a ſufficient Defence (unleſs that ſome Times they may be of Uſe upon the Frontiers, or on the Coaſt, where they may retard an Enemy till an Army come up) But if a Prince or State has no Army on Foot, let ſuch Caſtles be where they will, they are either utterly *unſerviceable*, or *dangerous*: The firſt, becauſe if very ſtrong, the Enemy marches on, and leaves them behind him altogether uſeleſs to the Proprietor; the other, becauſe they are eaſily loſt, and made Uſe of by the Enemy. And this was the true Cauſe of ſlighting moſt of the fortified Places in *Scotland* and *England*.

Tit. VI.

TITLE VI.

Of the Rewards and Incouragements of old and at present given to Soldiers.

1. AS in all Societies of Men, ſo chiefly in an Army, *Rewards* and *Puniſhments* are equally neceſſary. As to the firſt, there is nothing more conſonant to the Rules of Juſtice and Reaſon (nay *Reaſons of State* too) than to beſtow ſuitable *Rewards* on thoſe, who, with the Hazard of all that's dear to Men, do maintain and defend the Publick Peace and Safety, and by whoſe Watchings we all ſleep ſecurely: Nay, in the General, Rewards add Wings to Vertue, and rarely miſs to raiſe a generous Emulation in others. The Trophies of *Miltiades* at *Marathon* diſturbed *Themiſtocles* his Sleep, till he had raiſed unto himſelf and Country more glorious ones at *Salamine*: And *Ceſar* while he views *Alexander*'s Image, upbraids his own Slackneſs

neſs with the Memory of his own Conqueſts, and inſpirits himſelf to great Attempts: And this ſeems to have been the true Intendment of the ancient *Romans*, in placing in the Courts of their Houſes, the Images of their illuſtrious Anceſtors, with the *Trophies* and other Marks of Honour conferred on them by the State.

2. The firſt and moſt general *Reward* provided for Soldiers of all Ranks, is *that Vertue which is a Reward to it ſelf*, and the honourable Mention of their Perſons and Actions among Poſterity. Beſides, that by the *Roman* Law, ſuch as fell in Battel, were by a ſtrange *Fictio Juris*, underſtood in ſome Caſes, to be ſtill alive *(a)*. And certainly no Death can be more *glorious*, nor better merit the Name of the *Bed of Honour*. But to be more particular.

3. All Nations have ſtill conferred ſpecial Marks of Honour upon the Commanders in Chief of their Armies: For upon a ſucceſsful undertaking, *Trophies* were commonly erected to their Honour, on which were hung the Spoils of the routed Enemy. The victorious *Romans* Generals were alſo ordinarly ſaluted by their Army with the Title of *Imperator*, which nevertheleſs they were firſt to impetrate from the Senate. Beſides, that ſolemn

Sup-

(a) *Pr. Inſt. de Excuſ. Tut.*

Supplications, *Sacrifices*, *Feaſts*, &c. were appointed, to laſt for many or few Days, in Proportion to the Quality of the General, or Conſiderableneſs of the Atchievement. All which was done in Honour of the Commander while yet abſent, but at his Return a ſolemn *Tiumph* was frequently allowed him, eſpecially if he had put an End to a long, expenſive or bloody War. This Triumph was by them looked upon as the very top Pinacle of earthly Honour that could be conferred on any Man; which therefore the noble *Romans* courted with ſuch Earneſtneſs, that no Fatigues nor Dangers were by them thought inſuperable, that had any Tendency to ſo ſublime a Reward. But the deſigned Brevity of this Treatiſe will not allow me, to give a minute Deſcription of thoſe *Roman* Triumphs: The Curious may for this conſult the Authors quoted on the Margin *(a)*. *Laſtly*, For better retaining the Memory of ſuch glorious Atchivements, Generals were often ſirnamed from the Countries they had conquered; for ſo we find frequently in *Roman* Authors, the Names of *Aphricanus*, *Numridicus*, *Sarmaticus*,

(a) Alexr. *ab* Alexandro *genial. Dier. Lib.* 1. *Cap.* 22. Pancirol. *Rer. memor. Part.* 1. *Cap.* 5. *ibique* Salmuth. *in Comment.* Valtrin. *de Re milit. Lib.* 7. *Cap.* 3. *& ſeqq.* Roſin *antiq. Rom. Lib.* 10. *Cap.* 28. 29. Guicchardo *de Triumphis Veterum.* Baſ. Kennet. *Rom. Antiq*, &c.

cus, &c. For which I refer the Reader to the Proem of *Justinian*'s Institutes, and the modern Commentators thereon, where a great Number of those swelling Titles, how justly I shall not determine, are amassed together.

4. Nor were *private Soldiers* neglected in this Distribution of Honours. For in reading it frequently occurs, That their Behaviour was often solemnly praised and applauded by the General in a set and solemn Harangue to the People; and amidst the loud Acclamations of all the Citizens, they surrounded their General's triumphal Chariot in his Procession towards the *Capitol*; such of them as had eminently distinguished themselves, wearing about them those Marks of Honour, which were usually then conferred; such as Coronets of different Matters and Shapes, carrying some Resemblance to the Atchievement they had performed *(a)*, which they were on all publick Appearances ever thereafter allowed to wear. Besides, That sometimes they were honourably dismiss'd, (if they desired it) tho' they had not carried Arms for so long Time as Law prescribed. Of which more hereafter.

5. But since those Rewards I have named, have a Respect rather to *Glory* than *Gain*, I shall

(a) *See the above-cited Authors.*

ſhall forbear to inſiſt on them, as being a little foreign to my Purpoſe; eſpecialiy ſince Experience teaches us, That generally Soldiers are not ſo perfectly *Chameleons*, as to ſubſiſt upon this meer Air; ſuch Things commonly proving but very cold Inducements, eſpecially to private Soldiers, to run the many Risks, and undergo the various Fatigues of War: I ſhall therefore only take Notice by the Way, That for their Encouragement, it was very ſagely provided by the *Romans*, That the Children of ſuch as died in Battel, ſhould be maintained at the publick Charges *(a)*; which Cuſtom they doubtleſs borrowed from the Laws of *Solon*, who enacted the ſame at *Athens (b)*. But I proceed to yet more *ſubſtantial* Rewards, *viz.* the various Cuſtoms of Nations in diſtributing the *Spoil*, and other Things taken in War from the Enemy. For of Soldiers Pay I have ſpoken elſewhere.

6. By the general Law of Nations, and common Rules of Equity, *whatſoever is taken in War, does undoubtedly belong to the Undertakers (c)*: And this from a common and known Rule, *Commoda cujuſque Rei eum ſequi debent, quem ſequuntur Incommoda (d)*.

7. But

(a) Jul. Ferrettus *de Re milit. Pag.* 49. *Num.* 35. (b) Diogen. Laert. *in Vita* Solonis. (c) §. 17. *Inſt. de R. D. L.* 5. §. *Fin. ff. de A. R. D.* (d) *L.* 10. *ff. de R. I.*

7. But from this general Rule, both *Divine* and *Humane* Laws have by Degrees ſomewhat receded, and the *Publick Good* or *Neceſſity*, hath in all Nations introduced great Variations in this Matter. And, *Firſt*, By the *Law of God* delivered to his own People, there was a Difference made betwixt Things *moveable* and *immoveable*. The laſt of theſe were divided among the Tribes, either *by*, or *without Lot*; *without Lot*, Lands were aſſigned to the Tribes of *Reuben*, *Gad*, and Half *Manaſſeh*, on the Eaſt of *Jordan*, at their own Requeſt, and with Conſent of the other Tribes (*a*). *Caleb* alſo, according to God's Promiſe to him, had his Inheritance aſſigned him, in the ſame Manner (*b*). But to the other Tribes their Inheritance was divided *by Lot*, the Method whereof we read in *Joſhua*, *Cap.* 18. 19. After which general Diviſion, it's more than probable that each Family and Perſon had his Proportion allotted him in the ſame Manner, as may be gathered from the Paſſages concerning the Daughters of *Zelophehad*, and *Caleb* (*c*). But if after this Diviſion, any Tribe that was ſtraitned, did drive out the neighbouring *Canaanites*, their Lands belonged only to that Tribe (*d*).

8. As

(a) Numb. 32. (b) Joſ. 14. *v.* 12, 13. (c) Numb. 27. Joſ. 14. *and* 17. (d) Joſ. 17. 14. *& ſeqq*; *and* 19. 40.

8. As to Things moveable, If theſe were taken by *all the People*, they were equally diſtributed *among all* (*a*); but if only a *Detachment* was engaged in the Undertaking, then all inanimate Things taken (ſuch as Garments, Houſhold-ſtuff, Plate, *&c.*) did regularly belong only to thoſe that firſt attained Poſſeſſion of them (*b*). But if they were Animals (as Women, Children, Cattel, *&c.*) they were to be equally divided, betwixt thoſe who were *immediately engaged* in the Expedition, and thoſe who *remained with the Baggage*: With this Difference only, That the Five hundredth Part of the *former*'s Proportion, and the Fiftieth of that of the *latter*, was conſecrated to the Service of God (*c*). But this Method of Diviſion went alſo by Degrees into Deſuetude; for thereafter we find, That the whole Prey, without Diſtinction betwixt *living* and *inanimate* Creatures, or betwixt *thoſe engaged* and thoſe who *guarded the Baggage*, was equally divided among them all (*d*). But if they were Things *devoted*, (whereof there occur ſome Examples (*e*)) theſe could become no Man's *Property*; but if they were *inanimate*, were

(a) Deut. 20. 14. Joſ. 8. 27. (b) Numb. 31. 50, 53. (c) Numb. 31. 27. (d) Joſ. 22. 8. 1 Sam. 30. 24, 25. (e) Joſ. 6. 17. *& ſeqq*; *and* 7. *Verſ.* 1. Deut. 20. 17. 1 Sam. 15. 3.

were utterly to be *deſtroyed*; and if *living*, to be put to *Death*: And whoſoever preſumed to appropriate any ſuch Thing, was guilty of *Sacrilege*.

9. If thence we proceed to the *Republicks* of *Greece*, 'twill ſcarce be poſſible to diſcover what particular *Laws* and *Cuſtoms* they obſerved in this Matter. Only, what was their Practice in ſome Inſtances, we have an Account in their ancient Hiſtory. Thus *Juſtin* tells us (*a*), That Cities, when taken, belonged to the State in whoſe Name the Expedition was undertaken: But all Things moveable belonged to each particular Perſon that ſeized them; ſo that if a Town was taken by Storm, the Army had regularly the plundering thereof (*b*). But if the Enemy was worſted in Battel, nothing was to be imbeziled or impropriated, but the whole Plunder equally divided (*c*); which, as we may gather from *Virgil* (*d*), was either done by *Lot*, or by *publick Auction*, and the Price proportionally diſtributed. But ſometimes out of that Price, the Loſſes of ſuch as had ſuffered by the Enemies Inſults, were made up (*e*); or mercenary Soldiers hired (*f*): But the Enemies Arms were oftenеſt conſecrated to the Gods.

10. As

(a) *Lib.* 3. *C.* 6. *&* *Lib.* 5. C. 4. (b) Curt. *Lib.* 7. *Ca.* 6. (c) Juſtin. *Lib.* 2. *Cap.* 14. (d) *Æneid.* *Lib.* 9. (e) Juſtin. *Lib.* 6. *Cap.* 5. (f) Juſtin. *Lib.* 8. C. 1.

10. As to the Laws of the *Romans*, *Lands* and other *Immoveables* were commonly brought into the *publick Treasury* (*a*), unless they were such as had formerly belonged to private Subjects, and recovered from the Enemy; for those returned to the ancient Possessors, by Vertue of their *Jus Postliminii* (*b*). Yet several Instances there are of Parts of such Lands their being assigned to *veterane Soldiers*, who were no more bound to serve (*c*).

11. But *Moveables*, whether *living* or *inanimate*, when a Town was taken by *Storm*, belonged to those that first could seize them; but if it was taken by *Surrender*, or if Moveables were gained in Battel, the Price was regularly *confiscated* (*d*): Only the Commander in Chief was allowed to consecrate to the Gods what Share of it he thought fit.

12. Yet there want not Instances in *Classick Authors*, whereby it's clear that sometimes the *whole* Spoil, sometimes *Part* of it was divided among the Soldiers; so that Generals either allowed each Man to keep what he had gotten, (as once the Emperor *Alexander Severus* did, after a Victory over the *Persians* (*e*)) or

(a) *L.* 20. §. 1. *ff. de captiv.* *L.* 31. *ff. de Jur. Fisc.* (b) *L.* 28. *ff. de Captiv.* (c) *Vid. L.* 15. §. 2. *ff. de Rei Vind.* *L.* 16. *ff. de A. R. D.* *L.* 11. *ff. de Evict.* (d) *L.* 13. *ff. ad Leg.* Jul. *peculat.* (e) Ælius Lamprid. *in ejus Vita.*

or the Prey was divided in Proportion to each Man's Dignity and Rank; whereof *Grotius* affords many Inſtances (*a*): And according to him, the Diviſion was in this Manner, *viz.* a *Centurion* received *double* to what a Soldier got, a *Horſe-man triple*, and a *Tribune quadruple*. But ſometimes the Horſe got *two*, and the Centurion *three*; at other Times the Tribune and the Horſe-men got *four*. And after this Manner did the Emperor *Probus* divide the Spoil, reſerving nothing to himſelf but the Enemy's Arms (*b*). And thoſe Arms were ſometimes hung up in the Courts of the General's Houſe, but more frequently *devoted*, and being laid together in an Heap, were ſet on Fire, and conſecrated to *Vulcan*.

13. Beſides theſe, 'twas uſual for Generals among the *Romans*, to give *Donatives* to the Soldiery at their entering *Rome*, which ſometimes amounted to a prodigious Sum: And tho' the Cuſtom was not *unpolitical*, as being an Incentive to others to demean themſelves nobly; yet this *Inconveniency* frequently attended it, That the Ambition of giving ſuch Largeſſes, readily tempted their Commanders to commit many Oppreſſions, Plunders, *&c.* even in the Countries of Friends and Allies.

14. The

(a) *Lib.* 3. *de Jur. Bell. Cap.* 6. *N.* 17. *& ſeqq.* (b) Flav. Vopiſcus *in Vita* Probi.

14. The Half of the *Donatives* were ordinarily depoſited at the *Standards* and *Enſigns* (a), upon Pretence of keeping it for the Soldiers till their Diſmiſſion, leſt they ſhould ſquander it: But the true Reaſon was, That they knowing a conſiderable Part of their Stock to be lodged with the Colours, might fight the more manfully in Defence of them. Every Legion had their ten *Fiſcelli* or Bags, for keeping theſe *Donatives*, *viz.* one for every *Cohort*, and one ſupernumerary, into which, in the Beginning of each Month, every Soldier caſt ſomething, as a *Reſerve*, for the Burial of ſuch as had nothing to leave for their own Interrment.

Modern Laws and Cuſtoms relating to this Title.

15. It is not in our Days uſual to confer any peculiar Marks of Honour upon *ſingle Perſons* among the common Soldiery; (unleſs that when a Man diſtinguiſhes himſelf, he is in a fair Way to Preferment) but that more ſubſtantial Encouragement of providing libe-

(a) Veget. *de Re milit. Lib.* 2. *Cap.* 20.

rally for those who are disabled, and for the Wives, Children, *&c.* of such as are killed in the Service, does still take Place. And as to the honorary Rewards bestowed on Commanders, those for the most Part have *Profit* mixt with the *Honour*. But our solemn Rejoicings upon Victories, are so managed as our *Christian* Profession allows, *viz.* by setting apart Days for Thanksgiving to God, which is ordinarily succeeded by ringing of Bells, discharging of Ordnance, Fire-works, *&c.* But these Things are so universally known, that I shall proceed to the other Kinds of Rewards mentioned in the former Part of this Title.

16. In our Days then, the Rigour of the *Law of Nations* is never observed among *Christians*; for in many Instances, by *Cartel* or Compact betwixt contending Parties, great Mitigations are made of the ancient Ways of managing War. And in the first Place, as to Things *immoveable*; there is now commonly a Distinction made, betwixt such as are in the *Dominion* and *Property* of the *State*, and Things belonging in Property to *private Persons* residing there. As to the first, When a City or Fort is taken, the Victor, Prince or State, immediately acquires a Jurisdiction over the Place it self, and all the Territory it commands; the necessary Consequence whereof is, That he has Power to impose Taxes, *&c.* and acquires the

the Right of *Property* in all Lands that belonged in Property to the Publick.

17. But all *private Mens* Poſſeſſions are generally reſerved to them as before the Surrendery, they taking the Oath of Fidelity to the Conqueror, and being willing to pay the ſame Taxes with the other Citizens. Otherwiſe, when Towns are ſurrendered, ſometimes they capitulate with the Beſiegers, That they ſhall have Liberty within a certain Time, to make Sale of their Lands, Houſes, *&c.* and remove themſelves to another Place: Which Kind of Capitulation has been very frequent in the laſt Age.

18. As to *Perſons of Men*, theſe, if the War be among *Chriſtians*, do not become Slaves to ſuch as take them Captives, (as by the *Roman* Law they were) but upon Payment of their *Ranſom*, (which in private Soldiers is generally a Month's Pay) are allowed to return. Yet frequently *Exchange of Priſoners* is agreed upon; and ſometimes it's neceſſary, *viz.* in Caſe of a General Perſon his being taken, ſince no Ranſom can be paid for ſuch; who therefore muſt neceſſarily remain a Priſoner, till the Enemy take one of the ſame Rank, who may be exchanged for him. But if a Priſoner cannot inſtruct that he is truly a liſted Soldier, in that Caſe there being no Rule, he may be compelled to pay as much as the Victor thinks fit, or his own Ability

will allow. But at *Sea*, Priſoners, tho' Soldiers, never uſe to be ranſomed, at any fixed and determined Rate, ſo long as the War continues. Nay, *J. Voet*, Profeſſor of the Laws at *Leiden*, obſerves, That in the Year 1641, Soldiers taken even upon a *publick River* were refuſed to be redeemed for the Month's Pay; but were forced to compound the beſt Way they could with the Enemy, for their Ranſom.

19. But plain downright *Slavery*, which was the common Fate of Priſoners of old, is ſo far now outdated in *Chriſtendom*, that when a Slave ſets Foot on Shore, he is immediately underſtood to have recovered his native Liberty. Yet in Caſe of War with *Infidels*, the common Law of *Repriſal* allows us, to make ſuch as are taken, our Slaves for ever; yet with this notable Difference, That by the *Roman* Law nothing could effectually be bequeathed, either as *Legacy* or *Heretage*, to a Perſon in Captivity with the Enemy; becauſe that Kind of Commerce could only take Place among *Freemen* (*a*): Yet our modern Cuſtoms have very juſtly exploded that Subtility; ſuch Captives, tho' in the Hands of Infidels, being nowiſe thereby diveſted of any Privilege competent to Subjects; and therefore can not only *acquire*,

(a) *L.* 4. §. 1. *ff. de His. qu. pro non Scrip.*

acquire, but lawfully make *Wills*, and generally diſpoſe upon their own as Freemen.

20. In all other Things *moveable*, *Grotius* his Diſtinction, ſeems pretty conſonant to the preſent Practice of *Europe* (*a*), *viz.* Whether they be taken by Soldiers *in the Service of the State in an actual Expedition*, at leaſt by ſuch as are expreſly ſent out from the Commander, to intercept ſuch Things belonging to the Enemy; or, *If they be* Things taken indeed from the Enemy by Occaſion of the War, but *not in the publick Service*: For Example, When a Party, with Conſent of the Governour of a fortified Place, makes voluntary Excurſions and Inroads into the Enemy's Country. In the firſt of theſe Caſes, they who make the firſt Seizure, can pretend to no Property in the Things taken, but all belongs to the Prince or State whom they ſerve. But in the latter Caſe, whatſoever is taken, belongs undoubtedly to thoſe alone who are immediately concerned in the Expedition. And thus it's cuſtomary for all ſuch Things, when brought within the Camp or Garriſon, to be expoſed to open Port Sale, and the Price equally divided among all ſuch as were upon the Party; ſo that for *one* that falls to the Share of a Foot-man, a Horſe-man gets *two*: And if they be only Horſe, and above 50 in

(*a*) *Lib.* 3. *de Jur. Bell. ac Pac. Cap.* 6. *N.* 12.

Number; then a ſingle Trooper gets *one*, a Captain *ten*, a Lieutenant *five*, a Cornet *three*, a Quarter-maſter *two*, and a Corporal *one and a Half*. But if their Number be under 50, then the Captain only gets *ſix*, the Lieutenant *three*, the Cornet *two*, the Quarter-maſter *one and a Half*, and all the reſt *one*.

21. By Occaſion of this Diſtribution, there is a Queſtion, When a Party wreſts a Booty from the Enemy, which being re-taken by them, is again recovered by another Party of Friends, to whom the Prey ſhall belong? *viz.* Whether to the firſt or ſecond Party, or if it ſhould be divided equally betwixt them? And *Voet*, upon this Subject, tells us, That in this Caſe, the general Court-Martial of *Holland* has often decided in Favours of the ſecond Party; the Reaſon whereof may be, That the firſt Seizers had loſt the Thing by the ſame Law they acquired it, and the Booty had again aſſumed its *firſt Nature*: So that the other Party had rather taken what belonged to their *Foes* than to their *Friends*; and therefore the Property behooved to accrue to them, as being properly the firſt Occupiers.

22. Yet in this Caſe, by the preſent general Cuſtom of *Europe*, there is always a proportional Dividend due to the *Governour* of the Place, and other Officers under him; and this probably, for granting Liberty to the Party to make the Expedition. But if Soldiers going out

out upon ſuch a Deſign, ſhould before their Return, be ordered to another Garriſon, with the Company or Troop to which they belong, it is a Queſtion much harder to reſolve, To which of the two Governours, the Proportion of the Booty ſhould belong? And in this Caſe the forenamed Author relates, That their general *Court-Martial* has always choſen the *ſafeſt* and *middle* Way, (which in dubious Caſes, was frequently *Juſtinian* his Method) and made an *equal Dividend* betwixt the Two.

23. Further yet, in this Caſe, for preventing private *Imbezilments* and Scramblings, (a Thing frequent enough in thoſe Expeditions) all Leaders of ſuch Parties are, by the *Dutch* Articles of War, under ſevere Penalties, expreſly prohibited *to make Sale of any of the Things ſo ſeized, any where elſe than in the Camp or Garriſon, to which the Party belongs; where each Man, within three Hours after their Return, is to give up a Note to the Governour or Commander in Chief, of what he has brought in* (a).

24. The Reaſon of the Difference betwixt Things taken in the *publick Service*, and thoſe brought in by *voluntary Excurſions*, is, That each Man in the former Caſe, in ſome Reſpect repreſents the Prince or State whom he ſerves; beſides,

(a) *Artic.* 63, 64.

beſides, That in Reſpect of his Office, he is bound to go upon all publick Expeditions when commanded; and gets *Pay* (and therefore needs no *Perquiſites*) for his Pains; wherefore, being once fairly liſted, he is obliged, whether *voluntarily* or againſt his Will, to follow the Camp, to be preſent at all Engagements, and in ſhort to perform all the Service to the Publick, that lies in his Power: Whereas no Man can be compelled to make *private Expeditions* againſt the Enemy, but of his own Accord gives up his Name to the Leader of the Party. And therefore the Cuſtom is very rational, that in this Caſe, what each Party gets ſhould be their own, for the Fatigues they have undergone, and Risks they have run. Nay, this ſometimes takes Place even in *publick Expeditions*, *viz.* when a General, for Encouragement of the Soldiery, allows them the Pillage of a beſieged Town, when taken by Storm.

25. But, except in ſuch a Caſe, great is the Danger and Inconvenience of allowing Men in the Heat of a Conflict, to *fly upon the Spoil*. For the Enemy being not only *irritated* with the Loſs and Diſgrace, but animated by ſo looſe a Behaviour, will be very ready (if they be not intirely routed) to return upon the Victors, who being diſperſed and in Confuſion by their Eagerneſs upon the Pillage, may become a very cheap Prey to their Foes, and ſo

meet

meet with their own Graves, where they expected only to triumph; whereof *ſacred Hiſtory* affords us ſome Examples, and *profane*, many more. Beſides, That in this Caſe, the Partition is very *unjuſt* and *unequal*: For whereas the *gallanteſt* and moſt deſerving Men are commonly moſt intent upon the *Enemy*, the *Canaille* of an Army are in the mean Time buſy at the *Spoil*; ſo that they who fight againſt the *Dead* (if we may ſo ſpeak) are better rewarded than they who encounter the *Living*. But on the other Side, by an *equal* Diſtribution, after the Enemy is beat out of the Field, true Worth and Merit is rewarded, and even they not neglected, who bravely have laid down their Lives in their Country's Service: For by the modern Cuſtoms of *France*, *Holland*, *&c.* particularly by an Ordinance of the *States-General*, publiſhed in *March* 1665, it is appointed, That the Wives and Children of ſuch as die in Battel, ſhall draw double the Share would have befallen to the Defunct.

26. Upon theſe and the like Conſiderations, it's expreſly provided in Her late *Majeſty's Articles of War* for her Forces beyond Seas, Firſt, *That when it ſhall pleaſe God that Her Majeſty's Forces ſhall beat the Enemy, every Man ſhall follow his Officer in the Chaſe; but whoſoever ſhall preſume to pillage or plunder, till the Enemy be intirely beaten, he ſhall ſuffer Death,*

or

or ſuch other Puniſhment as ſhall be pronounced againſt him by the general Court-Martial; *and the Pillage ſo gotten ſhall be forfeited to the Uſe of the ſick and maimed Soldiers* (a). 2dly, *In what Place ſoever it ſhall pleaſe God that the Enemy ſhall be ſubdued or overcome, all the Ordnance, Ammunition, and Victuals that ſhall be there found, ſhall be ſecured for Her Majeſty's Uſe, and for the better Relief of the Army; and one tenth Part of the Spoil ſhall be laid apart towards the Relief of the ſick and maimed Soldiers (b).*

27. But if the War be managed by *Sea*, according to the uniform Practice of all *Europe*, whatever Things *private Adventurers* extort from the Enemy, become their own, only deducting a fifth Part as due to the *Fisk*, and a tenth (in ſome Places a fifteenth) to the *Admiral*; which is the Cuſtom of *France* and *Holland*. But whatever is taken by *War Ships* belonging to the Prince or State, accreſces to the *Fisk*, by the Laws of moſt of the maritime Powers in *Europe*; except that of late in this *Iſland*, Ships taken from the Enemy by Cruiſers on the Coaſt, are, by Act of Parliament, declared to belong to the Seizers.

28. Yet in Caſe of an extraordinary Piece of Service, other Nations have alſo given large Dona-

(a) *Art.* 28. (b) *Art.* 29.

Donatives to the Commanders and Crew of ſuch of their *Men of War*, as have notably diſtinguiſhed themſelves. Thus the States of *Holland* in the Year 1665, propoſed a Reward of 50000 *Florines*, to any that ſhould take or deſtroy the Enemies *Admiral*; or if a *Vice-Admiral*, 30000; if any other *Flag-ſhip*, 20000, and if a Ship of above 40 Guns, 10000. But if private Adventurers ſhould do the like, theſe *Præmia* were to be *doubled*.

29. *Laſtly*, Under this File of *Rewards* beſtowed on military Vertue, may not improperly be ranked the various notable *Privileges* competent to Soldiers. Which therefore ſhall be the Subject of the inſuing Title.

Tit. VII.

TITLE VII.

Of the various Immunities and Privileges competent to Soldiers.

1. AS to thoſe *Immunities* and *Privileges*, it will be fit to premiſe, That tho' they properly belong to Soldiers as ſuch, yet are they not indiſcriminately communicated to all who paſs under that Denomination. For *Firſt*, No military Privilege was competent by the *Roman* Form to ſuch Soldiers as were *ſupernumerary* to the Compliment of each Legion *(a)*; a Fault rarely committed in our Days.

2. Far leſs was the Benefit extended, either to ſuch as only lent their Names to fill up the Muſter-Rolls; or were only *honorary* Soldiers, but did no Duty; ſince the Performance

(a) *L.* 3. C. *de Offic. Magiſt. milit. L. Fin.* C. *de Apparit. Magiſt. milit.*

formance of Duty, and risking their Perſons, was the true Reaſon of conferring ſuch remarkable Privileges upon them (*a*). Yet this Exception is by no Means to be extended to ſuch *Volunteers* as ſerve at their own Charges, from a Principle of Bravery and true Love to their Country; thoſe rather meriting greater Privileges than others.

3. The moſt remarkable *military Privileges*, according to the *Roman* Law, are thoſe following; *Firſt*, Tho' regularly the *Fisk*, as *laſt Heir*, ſucceeded to ſuch as died inteſtate and had no Repreſentatives (*b*); yet a Soldier ſo deceaſing was ſucceeded by the *Cohort* or Company wherein he ſerved (*c*); but if a Soldier before his Deceaſe, had been condemned for a *military Crime*, the *Fisk* was preferred (*d*).

4. 2*dly*, If a Man made Purchaſe of any Thing with a Soldier's Money, tho in his own Name, the Purchaſe immediately belonged to the Soldier, and he might legally recover it from any Poſſeſſor (*e*); whereas, regularly, no Man becomes ſtraightway Maſter of ~~what~~ is purchaſed with his Money, but has only Action for the Money it ſelf, unleſs

(a) Pet. Antibolus *Tract. de Munerib.* §. 4. *Num.* 136. (b) *L.* 1. *C. de Bon. vacant.* (c) *L.* 2. 3. *C. de Hæred. Decurion.* (d) *L.* 13. *C. de Teſtam. milit.* (e) *L.* 8. *C. de Rei Vindic.*

unleſs the Purchaſe be aſſigned to him (*a*). Thus alſo from the Parity of Reaſon, tho' no Man by the common Law could acquire Right to an Action by *Proxy*, but behooved to have it made over to him (*b*); yet if a Soldier's *Factor* lent out his Money upon Security, the Soldier himſelf, without any Aſſignment, might in his own Name inſiſt againſt both *Principal* and *Surety* (*c*).

5. 3*dly*, Notwithſtanding the general Rule in Law, *That no Compact concerning the Succeſſion to a yet living Perſon's Eſtate, is valid* (*d*). Yet if ſuch a Paction interveened betwixt *Soldiers*, that the longeſt Liver ſhould enjoy the other's Means, it was declared to have the full Force of a ſolemn *Latter Will* or *Teſtament* (*e*).

6. 4*thly*, Every Houſe (except a few that were privileged) was bound to afford Quarters to Soldiers (*f*): Tho' according to common Rules, *Inn-keepers* alone were bound to admit Gueſts. Yet this Privilege took no Place in *Rome* it ſelf, becauſe there the Soldiers were lodged in the *Turrets* on the City Walls (*g*).

7. 5*thly*,

(a) *L.* 6. C. *de Rei. Vind.* (b) *L.* 8. §. *Fin. ff. Mandat.* (c) *L.* 26. *ff. de Reb. cred.* (d) *L.* 15. 19. C. *de Pact.* (e) *d. L.* 19. (f) *Tot. Tit.* C. *de Metat. & Epidem. L. Fin.* §. *Fin. ff. de Muner.* (g) *L.* 7. C. *de Metat.*

7. 5*thly*, The general Presumption is, *That all who live under any State or Government, are acquainted with its Laws* (*a*); yet as Ignorance of the Laws is generally presumed in Soldiers, so there wants not Abundance of Instances of their being restored against Deeds, which probably were the Effects of such Ignorance (*b*). Yet the Ground of this Restitution is not properly their *Ignorance* of the Laws, (for then, many others might for the same Reason lay Claim to it) but the main Cause is, That their Time being wholly incrossed by military Imployments, it can scarce be expected they will have Leisure to advise with those whose Profession obliges them to be thorowly acquainted with Law (*c*). And therefore it hath of late been decided in some foreign Courts (*d*), That if a Soldier be quartered where he has Opportunity of consulting Lawyers, and himself not being upon actual Duty, he is to forfeit the Privilege; his Error in that Case being rather the Effect of *Negligence* than *Ignorance*.

8. Neither is this Privilege to be denied to such Soldiers as are learned in the Laws, (as most

(a) *L.* 12. C. *de. Jur. & Fact. Ignor.* (b) *Vid. L.* 1. C. *de Jur. & Fact. Ign. L.* 9. §. 1. *ff. eod. L. fin.* C. *de Jur. delib. L.* 3. C. *de Vectigal. L.* 25. §. 1. *ff. de Probation.* (c) *L.* 10. *ff. de Bon. poss.* (d) Radelant. *Decis. cur.* Ultraject. *Decis.* 80. *Num.* 3.

moſt of the *Roman* Commanders were) providing they be upon actual Service: For tho' the ſame Negligence might be objected to them, yet it were hard to puniſh a Man, for his having ſo noble an Accompliſhment: For the true Cauſe of granting the Privilege (*viz.* the Hurry of an Expedition) takes Place as much in a learned Soldier, as another (*a*).

9. Yet here we are to conſider, that this Privilege is only to be underſtood with Reſpect to *poſitive Law*, but nowiſe to be extended to *the Law of Nature or Nations*. If therefore a Soldier do an Action, which all civilized People reckon a Crime, or which natural Inſtinct dictates to be ſuch, he is certainly unworthy of the Privilege (*b*).

10. *6thly*, Nor is it a ſmall *military Privilege*, that by the *Roman* Law, during their being on an Expedition, the *long Preſcription* runs not againſt them (*c*); neither does the *four Years*, within which they were bound to ſeek Reſtitution, againſt Deeds done in their Prejudice during their Abſence; it being reckoned to be *Reipublicæ Cauſa* (*d*).

11. *7thly*,

(a) *L.* 31. C. *locat.* (b) *See Inſtances of this in L.* 2. *ff. de juſt. & Jur. L.* 2. C. *de in jus. Voc.* (c) *L.* 3. C. *de Reſtit. milit. L. fin.* C. *quib. non objic. long. temp. præſcrip.* (d) *L. fin.* C. *de temp. in integ. reſt. junct. L.* 7. §. 45. *ff. ex quib. Cauſ. major.*

11. *7thly*, Another is, That a Soldier, during an Expedition, is free to make his Teſtament *in any Form* he pleaſes, nay *without all Form*, and even without Witneſſes, if the Will of the Defunct be but thereby known (*a*): Whereas Teſtaments by the common Law require many nice Solemnities.

12. *8thly*, To theſe may be added, That during the Time that a Soldier is paſſing the *General Review* (which by the *Roman* Cuſtom was performed with great Solemnity) he could not be cited to appear in Judgment for a civil Debt (*b*).

13. *9thly*, By the *Roman* Law, a Man *condemned* could make no Will; or if he had made any before, the ſame became void; becauſe he, as being *ſervus Pœnæ*, was not in a Capacity of teſting (*c*). Yet a Soldier being ſo condemned, was privileged (unleſs his Crime carried Breach of Truſt) to teſt upon ſuch Means as he had acquired by the Sword, which the *Romans* called *bona Caſtrenſia* (*d*).

14. *10thly*, By a Conſtitution of the Emperor *Aurelian* (*e*), Phyſicians were bound to attend ſick and wounded Soldiers *gratis*;

(a) *Tot. Tit. Inſt. ff. & C. de Teſtam. milit.* (b) *L. 2. ff. de in jus. Voc.* (c) *L. 6. §. 6. ff. de Injuſt. rupt. teſt.* (d) *d. L. 6. §. 6. L. ii. ff. L. 13. C. de Teſtam. milit.* (e) Flavius Vopiſcus *in his Life.*

which *Diodorus Siculus* (*a*) tells us was, long before that, cuſtomary among the *Egyptians*: But there it was a leſſer Hardſhip, Phyſicians among the ancient *Egyptians* (as the ſame Author informs us) being maintained on the publick Charges.

14. 11*thly*, It was alſo a notable military Privilege among the *Romans*, That a Soldier being abſent upon an Expedition, his Wife was bound to wait for his Return; nor could ſhe be married to another, however long the Time of his Abſence was, unleſs the *Clerk* of the *Cohort* to which he belonged, ſhould firſt make Oath that he was dead; and even in that Caſe, a full Year was to interveen betwixt the Oath and her ſecond Marriage; and this on Pain (both to her and her ſecond Husband) of being puniſhed capitally as Adulterers (*b*).

15. 12*thly*, A *Roman* Soldier could neither be *incarcerated* for a *private Debt*, nor his whole Means extorted from him upon that Account, but was allowed by their Law, the *Beneficium Competentiæ* (*c*). Which Privilege alſo extended to *Veterans*, that were honourably diſmiſt.

16. 13*thly*, Neither a Soldier actually ſerving, nor a *Veteran*, was liable to publick *perſonal Burdens* or *Services* (*d*): And if a *Veteran*

(a) *Hiſtor.* Lib. 2. (b) *Nov.* 117. Cap. 11. (c) L. 7. ff. *de Caſtrenſ. Pecul.* L. 6. *L.* 18. ff. *de re judic.* (d) L. *fin.* §. 1. ff. *de Veteran.* L. 1. C. *eod.* L. 3. C. *de his qui non implet. Stipend.* L. 8. ff. *de Excuſ. Tutor.* L. 9. C. *quand. Provoc. non eſt neceſſ.*

teran did voluntarly perform ſuch Services, (for an actual Soldier could not ſo much as be allowed (*a*) he did not thereby forfeit his Privilege at other Occaſions (*b*). Yet *Veterans* were not generally exeemed from ſuch publick Burdens, as were purely *patrimonial* (*c*).

17. 14*thly*, By the ancient *Roman* Law, Children *in Familia* were ſo far upon a Level with Slaves, that regularly they could acquire nothing to themſelves, nor could any Acquiſt ſubſiſt one Moment in their Perſon, but immediately accreſced to the Father (*d*). Yet if ſuch a Son became a *Soldier*, the full Dominion and Property of what he acquired in the Service, became abſolutely his own in all Reſpects, as if he had been altogether *ſui Juris*, which Privilege he ſtill retained after he became a *Veteran* (*e*); and as a neceſſary Conſequence thereof, could either diſpoſe upon ſuch Things *inter Vivos*, or by *Teſtament*, as he thought fit, and this even without his Father's Conſent (*f*).

18. 15*thly*, There is yet another Privilege which was competent not only to *Soldiers*,

(a) §. 10. *Inſt. de excuſ. Tutor.* (b) *L.* 2. *ff. de Veteran.* (c) *L.* 2. 4. *Pr. &* §. 4. *ff. de Veteran. L.* 7. *C. de Vectigal.* (d) §. 1. *Inſt. per quas Perſon. cuiq. acquir. L.* 79. *ff. de acquir. Hæred.* (e) *d.* §. 1. *&* *L.* 10. 12. *ff. de Caſtrenſ. pecul. L.* 3. *C. eod. L. fin. C. de in Off. teſtam.* (f) *L.* 2. 6. *ff. de Caſtrenſ. pecul.*

and *Veterans*, but to their *Children* of the firſt Generation, *viz.* That as in no Caſe could they be ſubjected to an Examination by *Torture*, for expiſcating Truth; ſo in the general they were freed (let the Crime be what it will) from all *plebeian* and *ignominious Puniſhments*; ſuch as Condemnation to the Mines or Oars, fighting with Beaſts, Hanging, Crucifixion, *&c*, (*a*).

19. *Laſtly*, There were ſome ſpecial Privileges competent only to *Veterans*, ſuch as their Immunity from burdenſom publick Offices, quartering of Soldiers, *&c*, (*b*).

Modern Laws and Cuſtoms relating to this Title.

20. What Share of the preceeding Immunities and Privileges does belong to our *modern Soldiery*, is much controverted among Lawyers beyond Seas: And indeed, tho' it may be ſaid in the general, That there is now the *ſame*, or *greater* Ground for granting them ſuch Indulgences; ſince the Toils and Fatigues they undergo

(a) *L.* 8. *C. de Quæſtion. L.* 3. §. 10. *ff. de Re milit. L.* 1. §. 3. *ff. de Veteran.* (b) *L.* 1. *C. quib. Mun. excuſ. hi.*

undergo, and Risks they run, are the *ſame* (or *greater*) now as then: Yet ſome of the Privileges I have mentioned, can certainly take no Place at this Day in any *European* Nation; ſince they wholly depend upon ſome *Roman* Conſtitutions and Cuſtoms, that are now every where gone into Deſuetude.

21. Thus we find, that now a Days, Pactions concerning the Succeſſion to a living Perſon's Eſtate, are very frequent, eſpecially in *antenuptial Contracts*; ſo that as to thoſe, a Soldier ſtands not in Need of any Privilege.

22. Neither are the old *Roman* Niceities in making *Latter-wills*, any where obſerved now a Days: So that any Man as well as a Soldier, may ſafely teſt, in the plaineſt and ſimpleſt Manner.

23. As to their general *Review* or *Luſtration*, which was performed with ſo much Ceremony, and even with *religious Rites*, the Light of the *Goſpel* having long ſince out-dated thoſe Vanities, the Soldiers Immunity from Citations during that Time, is now of no Uſe.

24. Moreover, all Diſtinction of the *Peculia*, being long ſince almoſt every where out of Doors, any Son *in Familia* (being of Age) as well as a Soldier, has the free Diſpoſal of what he acquires.

25. The other military Privileges I have mentioned, do indeed generally take Place in moſt Parts of the Continent of *Europe*, but

ſcarce in *Britain*, at leaſt not in *Scotland*. For with us, for Example, the King is laſt Heir to *Soldiers* as well as *others*. Neither does a Soldier in this Nation acquire immediate Right to a Thing bought with his Money by another Man; nor generally ſpeaking, *will Ignorance of the Laws* excuſe him; tho' in that Caſe it's not improbable, that a Soldier would not find ſo great Difficulty to be reſtored againſt a Deed done by himſelf, or an Omiſſion in his own Prejudice, as another Man. Thus, not many Years ago, a Soldier was reponed againſt a *Certification* in an *Improbation*; which as the Viſcount of *Stair* obſerves, was the only Inſtance of any Man's being reponed in that Caſe: But here there were other concurring Specialities, which probably moved the Lords to repone him, *viz.* That he was *Minor*, and actually in the *Service* of the Government beyond Seas in *Ireland*, and ſo *Abſens Rei publicæ Cauſa*: Otherwiſe, it's much to be doubted that his alone Privilege as a Soldier would have protected him.

26. The *long Preſcription* alſo, with us, runs againſt a Soldier as well as any other. But what has been obſerved concerning the Attendance on the ſick and wounded, is indeed ſomewhat altered, both in this *Iſland* and all *Europe* over, but much to the Advantage. For now *generally* all Regiments have their own *Chirurgions*, who not only have their Pay,

Pay, but their Cheſts of Drugs furniſhed by the State; and particularly ſo careful has the Legiſlature of this *Iſland* been of the right managing of the Sick and Wounded, that by Act of Parliament (*a*), *All Chirurgions of the Army are appointed to make up their Cheſts of Drugs, no where but in the Apothecaries Hall at* London; *where they are to be inſpected and approven by the Maſter, Warden,* &c. *and atteſted under their Hands.* But beſides the Chirurgions that attend an Army, there are now almoſt every where, well indued *Hoſpitals* for Intertainment and Cure of the Sick and Wounded, of which we have no Precedent in *Roman* Hiſtory.

27. As to a Soldier's Wife, our modern Tribunals in *Europe*, do always find, That however long his Abſence be, the conjugal Tie cannot thereby be diſſolved; and therefore at his Return, they do ſtill adjudge the Woman to the firſt Husband; whereof there are Abundance of Inſtances in the *French* and *Belgick* Hiſtories. But ſtill it's to be conſidered, That tho' in this Particular, our modern Cuſtoms, conform to the *divine* Precepts (*b*), have far out-run even the *Roman* Law, in Favours of abſent Soldiers, yet this is no Privilege

(a) *Anno* 9. Annæ *Reg.* (b) 1 *Cor.* 7. 13.

vilege competent to them as ſuch; ſince any other Man may claim it.

28. Further yet, with Reſpect to *Incarceration*, not only is a Soldier now ſecure againſt all Commitment for civil Debts, during a War, but in this *Iſland* that ſame Immunity is frequently granted them, to laſt for ſome Time after Peace is concluded, and the Army disbanded. Thus by Act of Parliament (a), after Concluſion of the Peace at *Utrecht*, *the Perſons and Goods of ſuch, as had been Soldiers during that War, were declared free from Arreſts for three Years.* But the *Beneficium Competentiæ*, is not with us indulged to a Soldier.

29. Immunity from being *tortured* for extorting Confeſſion, is not indeed allowed to Soldiers beyond Seas: But in this Kingdom, *the Claim of Right* hath made it the univerſal Privilege of all Subjects.

30. There are ſeveral other *Immunities* and *Privileges*, unknown to the *Romans*, that have been allowed to Soldiers in this *Iſland*; but are commonly but temporary, and to laſt either during an Expedition only, or for a certain Number of Years. Thus by ſeveral of our old *Scots* Acts of Parliament, particularly during the Reign of Q. *Mary*, and of late again by

(a) *Anno* 12. Annæ *Reg.*

by Act *W.* and *M. Parl.* 1. *Seſſ.* 2. *Cap.* 37. it is declared, *That the Heirs of ſuch as ſhall be ſlain in military Service within the Dominions, ſhall be free of Ward, Relief, Marriage, Non-entry*, &c. And for preventing all Imbezilment of deceaſed Soldiers Effects, it is ſpecially appointed in Her late *Majeſty's* Articles of War, for her Forces beyond Seas (*a*), "That if any Soldiers die, no other ſhall take "or ſpoil his Goods, upon Pain of reſtoring "double the Value to him to whom they be- "long, and of ſuch further Puniſhment as a "*Court Martial* ſhall think fit; but the *Cap-* "*tain* of the Company of which ſuch a Sol- "dier was, is to take the ſaid Goods into his "Cuſtody, and diſpoſe of them for paying his "Quarters, and keep the Overplus (if any be) "for the Uſe of thoſe to whom they belong, "and who ſhall claim the ſame within three "Months after his Death. And if any Cap- "tain or Officer die, the *chief Commander*, is "to take Care of reſerving his Eſtate in like "Manner.

31. The Kings of *England* alſo have ſometimes been conſtrained by Reaſons of State, to prevail with the Parliaments, to grant large *Immunities* and *Privileges*, even to *Veteran Traitors*. Thus, upon the Reſtoration of

(*a*) *Art.* 63.

of King *Charles* II. there is an *Engliſh* Act of Parliament *(a)*, wherein it's declared, "That "all Officers and Soldiers, who were under "the Command of the Captain General of the "King's Forces *(but who by the Way had been "for the eighteen Years preceeding, in open Re-"bellion againſt His Majeſty and His Royal "Father)* the 29th of *April* 1660, and had "not ſince deſerted the Service, or refuſed "to take the Oaths of *Supremacy* and *Alledge-"ance*, ſhall be free to exerciſe any handy "Craft, or Trade exerciſed about Manu-"factures, in Manner following, *viz.* Such as "have been Apprentices may exerciſe ſuch "Trades as they are bound to, tho' they "ſerved not out their Time, with like Im-"munities as if they had: And all others, ſuch "Trades as they were apt and able for, in "the Towns and Places within the ſeveral "Counties where they were born. Only "their Service muſt be proved by a Certifi-"cate of ſome Field Officer, with two Com-miſſion Officers of the Regiment where the Party ſerved, or ſome general Officer of the "Army, *&c.*

32. Yet Immunities and Privileges of the ſame Kind, have alſo been frequently indulged by the Kings of *England*, upon far better Grounds,

(a) *Stat.* 12. Car. 2. *Cap.* 16.

Grounds, to the Soldiers of their own Armies, (who had faithfully ſerved them during a War) upon Concluſion of Peace. Thus of late upon Concluſion of the Peace at *Reſwick*, And again of that at *Utrecht*, by ſpecial Statutes (*a*), *disbanded Soldiers are allowed to ſet up any Trade within any Burgh, except within the Precincts of the two Univerſities.*

(a) *Stat.* Will. *Anno* 1698. *& Stat. Anno* 12. Annæ *Reg.*

Tit. VIII.

TITLE VIII.

Of ſome other ſingular Laws and Cuſtoms relating to the Soldiery, which generally afford them no Benefit.

1. BESIDE the Singularities mentioned, which properly fall under the Name of *Privileges*, there are others, which have been introduced concerning Soldiers, out of the Road of common Law, which *regularly* afford them no Advantage, and therefore in Propriety of Speech, can ſcarce be called *Privileges*. Of thoſe I ſhall ſubjoin the few following Inſtances.

2. *Firſt*, Without ſpecial Permiſſion from the Prince, a Soldier, according to the later *Roman* Laws, could not carry along with him into the Camp, his *Wife*, *Children*, *Family*, &c.

3. 2*dly*, Soldiers were prohibited to *marry* Women of the *ſame Province* wherein they ſerved

ſerved, unleſs it was their native Province *(a)*. Neither could a Soldier take to Wife an *enfranchized Bond-Woman (b)*.

4. 3*dly*, All who were liſted in the Army were interdicted the *Purchaſe of Lands* (whether in their own or in another's Name) in that Province where they were carrying Arms, till they had completed their ordinary Time of Service, on Pain of Confiſcation of the Purchaſe; unleſs it was the Heretage of their Anceſtors put to open Sale by the *Fiſk*. The Reaſon of the Prohibition ſeems to be, leaſt the Attendance on Agriculture ſhould divert them from their proper Buſineſs, *viz.* from the Exerciſe of Arms, to a Work which (in Compariſon) was thought *ignoble* and *ſordid*: Which Reaſon nowiſe taking Place with Reſpect to *Tenements within Burgh*, or even to Lands lying at *Diſtance* in another Province; they were therefore at Freedom to make Purchaſe of thoſe *(c)*. Yet if any Man, tho' of the ſame Province, bequeathed his Heretage to a Soldier, he was not prohibited to enjoy it freely *(d)*; ſuch a Caſe being moſt favourable among the *Romans*, as in the general, the Caſe of latter Wills was always with them; *it being looked upon as a publick Concern, That the Wills of dying Men ſhould take Effect.*

(a) *L.* 65. *ff. de Rit. Nupt.* (b) *L.* 21. *C. de Nupt.* (c) *L.* 9. 13. *ff. L.* 15. *C. de Re milit.* (f) *d. L.* 9. §. 1.

Effect. Nay further, if a Soldier purchased Lands, tho' in the same Province where he served, but was not molested nor insisted against upon that Account, till he had completed the Time of his Service, he could not thereafter be disquieted on that Score, nor the Lands confiscated *(a)*.

5. 4*thly*, Not only Purchase, but even what we call *Tacks* or *Leases* of other Mens Lands, nay Houses, were interdicted a Soldier *(b)*. And this, left that *Insolence* which commonly attends armed Men, should prompt them to oppress their Neighbours, and that martial Heat, which should be discharged upon the *Enemy*, should spend it self upon the poor *Peasants*. And therefore it is, that in one of the forecited Constitutions (*c*), it is statute, That from the Date of the Contract of Location, the Soldier shall be holden as *ipso Facto* cashiered and infamous, without so much as the previous Sentence of a Judge, and bound to refound whatever Donative he had received from the Publick. And what is thus interdicted them in *Person*, is no less so, when acted by *Proxy (d)*: Yet learned modern Commentators think, That the Prohibition is nowise to be extended to a *Dwelling* which

(a) *D. L.* 9. §. 13. *ff. de Re milit.* (b) *L.* 31. *L. fin. C. locat.* (c) *d. L. fin.* (d) *L.* 31. *C. locat.*

which a Soldier hires for himſelf, with Sta-bles, *&c.* (*a*).

6. *5thly*, No Soldier by the common Law was allowed to be a *Procurator* or *Factor* in other Mens Affairs, (tho' their neareſt Rela-tives) whether the Buſineſs were *judicial* or *extrajudicial* (*b*), in ſo far, That if a Sol-dier had received Money, *&c.* on ſuch an Ac-count, the Party was allowed to repeat it (*c*). Yet ſome Exceptions there are from this ſe-vere Rule. For, *Firſt*, *Liberty* was a Thing ſo favourable, that even a Soldier was allow-ed to defend any of his near Relatives, when proſecuted in Order to reducing them into the Condition of *Bond-men* (*d*). *2dly*, Soldiers were alſo allowed to proſecute a *real* or *verbal Injury*, committed againſt their Wives, Pa-rents, Children, *&c.* (*e*). *3dly*, Since they were not prohibited to attend their own *judicial Affairs* (*f*); therefore, by good Conſequence, they were allowed to manage the common Cauſe of the *Cors* or *Company* to which they belonged, which upon the Matter was their own (*g*). But, leſt this Liberty to carry on their own Proceſſes, ſhould tempt them to

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(a) Acaceus Enenkel. *de Privileg. mil. Lib.* 2. *Privil.* 11. N. 8. (b) §. *fin. Inſt. de Exception.* L. 8. §. 2. *ff. de Procur.* L. 7. C. *eod.* (c) *L.* 5. C. *de Condict. ob Cauſ. dat.* (d) *L.* 3. §. 1. *ff. de. Liber. Cauſ.* (e) *L.* 8. C. *de his qui accuſ. non Poſſ.* (f) *L.* 9. C. *de Procur.* (g) *L.* 8. §. 2. *ff. de Procurat.*

buy Pleas, therefore that hateful Practice was expresly interdicted a Soldier (*a*).

7. *6thly*, No Soldier, by the *Roman* Law, was allowed either to be an *Accuser* in *Criminal* Causes (*b*), or so far to debase himself, as to be a *Delator* of concealed Goods, that any Way had fallen to the *Fisk*: Both this and the preceeding Prohibition being founded on this, That Arms, not Arts, (especially such as have any Relation to Law) ought to be a Soldier's main Study, true active Valour never appearing so much in the *Tongue* as *Hands*. Only here the common Law made this Exception, That in Cases of such *Treason* as comes under the Name of *Perduellion*, (*viz.* When a Prince or State are by their own Subjects invaded with open Force) Soldiers, as well as others, were allowed to be *Accusers*, it being in an eminent Manner both the Duty and Interest of such, That Disturbers of the publick Peace be brought to condign Punishment (*c*).

8. *7thly*, No Soldier, by the common Law, was allowed to become *Caution* or *Surety* for any other, unless for his own Behoof (*d*). Nor, *8thly*, Were they permitted to make any *Donation* in Favours of their *Concubines* (*e*).

Nor,

(a) *L.* 7. C. *eod.* (b) *L.* 8. C. *de Accus.* (c) *L.* 7. §. 1. *ff. ad* Leg. Jul. *Majest.* (d) L. 8. §. 1. *ff. qui Satisd. cog.* (e) *L.* 2. C. *de Donat. int. Vir. & Uxor.*

Nor, 9*thly*, To be *Executers* of *Sentences*, whether in *Civil* or *Criminal* Cauſes (*a*), or *Collectors* of publick Taxes (*b*). Neither, 10*thly*, Could Soldiers be warrantably imployed in any *private Affair* of their Commanders (*c*); and that upon very ſevere Penalties (*d*).

9. I have been the ſhorter on theſe Heads, that they afford but little Uſe in our Days, ſcarce any of them now taking Place in *Europe*. Thus we daily ſee Soldiers entring into Contracts of all Sorts, and General Perſons managing Civil Affairs of the greateſt Conſequence; nay, private Soldiers betaking themſelves to various Trades and Employments, conſiſting always with the Profeſſion of the Sword. Only, by one of Her late Majeſty's Articles of War for Her Forces beyond Seas, it is injoined, (*e*) *That no Officer or Soldier ſhall be a Victualler in the Army, upon Pain of being puniſhed at Diſcretion.*

(a) L. 8. C. *de Offic. Rect. Provinc.* (b) L. 10. C. *eod.* (c) L. 12. §. 1. *ff. de Re milit.* (d) *Vid.* L. 15. C. *eod Nov.* 16. Gudelin. *de Jur. Noviſſ.* Lib. 5. Cap. 21. (e) *Art.* 49.

TITLE IX.

Of military Crimes or Delinquencies, with the various Punishments awarded thereto, both according to the ancient and modern Forms.

1. IT is an irrefragable Truth, and attested by the Experience of all Ages, That exact and implicit Obedience to the *Military Laws* and *Instructions* is the surest Means to keep an Army in any tolerable Order, and render it finally victorious. And that this was well understood by the Ancients, *Xenophon*, in the Institution of *Cyrus*, affords us a memorable Instance, of one *Chrysanthus*, who, in the Heat of Battel, had his Hand lift up to strike an Enemy, but hearing in the very Instant the Trumpet sound Retreat, stop'd his Blow: A great Sobriety of Courage, so to shew more Zeal to the *obeying* his

his General, than the *annoying* his Enemy; and an Inſtance of much Reproach to many of our *modern* Soldiers. But ſince this due Obedience to Orders, is not to be expected from the bare Propoſal of *Rewards*; and that daily Experience informs us, That the far greater Part of the *Plebeian Soldiery*, are Men of ſo ignoble, diſingenuous Tempers, as can never be drawn by ſuch Allurements; nay, *Coercion* being (generally ſpeaking) the ſureſt Principle of all vulgar Obedience; there is therefore another Part of *military Inſtitution*, fitted to ſuch Mens Capacities, and theſe are the various *Puniſhments* awarded to their *Crimes*, which, as Goads, may *drive* thoſe brutiſh Creatures, who will not be *attracted*. And of theſe I come next to treat.

2. And here I ſhall firſt obſerve, That Crimes in general, are either *common*, *viz.* ſuch as may be acted by any Man; as Murder, Adultery, *&c.* or they are *purely Military*, to wit, that can be committed only by a Soldier; ſuch as *Mutiny*, *Deſertion*, &c. (*a*): Some add a third Kind, which indeed are ſo far of a *mixed Nature*, that any other, as well as a Soldier, may be guilty of them; but if they be perpetrated by ſuch as are liſted under Command, they are not puniſhed after

(*a*) *L.* 2. *ff. de Re milit.*

the common Form, but in an extraordinary Manner, and generally with much greater Severity.

3. Theſe military *Puniſhments* among the *Romans* were various, according to the *Degree* and *Quality* of the Crime: Such as beating with Rods, a pecuniary Mulct, Condemnation to ſevere and laborious Works, Degradation, Caſhiering with Ignominy, Decollation, and in ſome extraordinary Caſes, burning alive *(a)*.

4. The *Place* of Puniſhment, by their Conſtitution, was, where-ever the Crime was acted *(b)*; and this as well for *Terror* of others, as for the *Conveniency* of Probation. Which was ſo ſtrictly obſerved, that it was their Cuſtom to remit a Criminal ſeized elſewhere to be judged and puniſhed upon the Place where the Offence was done *(c)*.

5. Further, concerning Puniſhments, we may remark, That (generally ſpeaking) they were more *ſeverely* inflicted upon *Soldiers* than other Men, tho' the Crime was the ſame. And this, *Firſt*, Becauſe liſted Soldiers, who are entertained at the publick Charges, lye under ſtricter Ties of Obedience than private Men, and therefore their Debordments juſtly entitle

(a) *L.* 3. §. 1. *ff. de Re milit.* (b) *L.* 3. *Pr. ff. eod.* (c) *L.* 7. 11. *ff. de Cuſtod. & Exhib. Reor.*

entitle them to ſo much the ſeverer Puniſhments. 2*dly*, Becauſe *military Diſcipline* exacts much ſharper Inflictions on Offenders; ſince, without that, Mens natural Pravity (which is heightned by being armed) would be ready to incline them to all Manner of Inſolencies and Outrages. Nay, upon this Account we find, That even the moſt clement Generals have (as in Caſes of *Decimation* for Crimes of a high Nature committed by a Multitude) puniſhed the *Innocent* with the *Guilty*: *Habet, ſciz.* ſays *Tacitus* (a), *aliquid ex Iniquo omne magnum Exemplum, quod contra ſingulos Utilitate publica rependitur.*

6. Yet *Novices*, whom they called *Tyrones*, were generally exeemed from the Severity of military Puniſhments (*b*); partly becauſe of their preſumed Want of Knowledge and Experience (*c*), partly becauſe of the Rawneſs and Inconſtancy of their Judgment: *Drunkenneſs* alſo, by the *Roman* Law, afforded ſome *Extenuation*, if the Crime was *capital* (*d*).

7. *Laſtly*, As to military *Delinquencies* and their *Puniſhments*, this ſevere general Rule is laid down in the Civil Law, *That whoſoever, whether by Omiſſion or Commiſſion, ſhall diſobey,*

(a) *Annal. Lib.* 4. *Cap.* 44. (b) *L.* 3. §. 9. *ff. de Re militi.* (c) *L.* 4. §. *fin. ff. eod.* (d) *L.* 6. §. 7. *ff. eod.*

or act without his General's Orders, even tho' Success should attend his Undertaking, shall be punished to Death (*a*); And of this there want not surprizing Instances both in *Greek* and *Roman* Story (*b*), even of Parents who spared not the Blood of their own Children, but adjudged them to a cruel and ignominious Death, for fighting the Enemy without Orders, tho' they had returned complete Victors. Yet it can scarce be denied that those Generals, out of a fond Affectation of strict Observance of military Discipline, were carried to downright barbarous Cruelty, and manifest Injustice too; since (beside many other Considerations) the Law of no Nation allows a Father to judge in the Cause of his own Son. But to return, I shall proceed to mention some Crimes, which, either for their *Atrocity*, or *Frequency*, or *both*, do justly challenge the Care of all Soldiers to avoid them.

8. *First*, Of all Crimes, that of *Treason* and *betraying Publick Trust*, has always been, especially in a Soldier, esteemed the most atrocious. A Traitor is he, *who willfully and fraudulently supports and abets the Enemy's Interest, to the Ruin or Detriment of the Prince or State, to whom he owes, and has vowed Faith and true Alle-*

(a) *L.* 3. §. 15. *ff. de Re milit.* (b) Plutarch *in Parallel. N.* 25. Valer. Maxim. *Lib.* 2. C. 7. *N.* 6.

Allegiance. Such Men have indeed been generally deteſted by all Perſons in all Ages; ſo that *Virgil* brings them in leading the Van in Hell (*a*),

Vendidit hic Auro Patriam Dominumq; Potentem
impoſuit.

Nay, even on *Earth*, as their Wickedneſs is *unexpreſſibly great*, ſo is their *Puniſhment* generally *rigorous* and *ſevere*. For, tho' it be ſuppoſed that they ſpin out the Threed of their wretched Life, by a timely eſcape; yet even they who love and abet the *Treaſon*, never miſs to hate and abhor the *Traitor*. And indeed, who would truſt that Man, who has already violated the moſt ſacred Ties, that Nature, Morality, or Religion can bind upon him?

9. This Kind of *Treaſon*, which mainly conſiſts in betraying of Truſt, may be many Ways committed by a Soldier; but moſt dangerouſly, when acted by one, who is inveſted with any Command or Authority. Thus, by the common Law, it was Treaſon in *General Perſons* to lead the Army, or Part of it, wilfully into an Ambuſh; to cauſe or procure *Friends* or *Allies* to become *Enemies*;

(a) Æneid. 6.

mies; or ſubdued Provinces to withdraw their Obedience, and revolt; acquainting the Enemy with our Deſigns; or ſupplying him with Meat, Money, Arms, Ammunition, Horſes, *&c.* (*a*); betraying a Friend or Confederate, (*b*) a City or Country, to him (*c*). All theſe were, by the later *Roman* Law, *adjudged to the Flames* (*d*): But *Crucifiction* was the ancienter Puniſhment of ſuch, till that Kind of Death was, upon a *pious Account*, aboliſhed by the Emperor *Conſtantine* the Great (*e*). Moreover, this Crime was committed, and its Puniſhment incurred, by a deſigned withdrawing in the Heat of Battel (*f*). *Laſtly*, Under this File may be ranked, the giving the *Parol* or *Sign* to the Enemy, *&c.* (*g*).

10. All thoſe I have mentioned being undoubtedly guilty of *Leſe-Majeſty* in the higheſt Degree, are, by the *Roman* Law, obnoxious to the Puniſhment awarded to *Perduellion*; and ſo are adjudged to forfeit Life, Lands, Goods, Honours, *&c.* (*h*). Which Puniſhment was very juſtly extended to the *Fautors* and *Abettors* of the Crime, whom we call *Airt and Part*, and thoſe who knowing the Con-

(a) *L.* 6. §. 4. *ff. de Re milit. L.* 4. *ff. ad Leg.* Jul. *Majeſt.* (b) *L.* 3. *d. Tit.* (c) *L.* 10. *ff. eod.* (d) *L.* 38. §. 1. *ff. de Pœn.* (e) Cujac. 5. *Recept. Sent.* Pauli. *Tit.* 20. (f) *L.* 3. *ff. ad Leg.* Jul. *Majeſt.* (g) *L.* 1. §. 1. *ff. d. Tit.* (h) *L.* 5. *C. ad Leg.* Jul. *Maj.*

ſpiracy, have *concealed*, and not *revealed* the ſame (*a*). Nor is there here any Stretch of *Severity*, far leſs *Unjuſtice*, ſince theſe Men make as liberal Diſcoveries of their wicked Inclinations as the principal Actors: Beſides, That few, for the moſt Part, being privy to ſuch Deſigns, if thoſe who know them do not reveal them, they may eaſily be accompliſhed to the Ruin of the State. And therefore, to remove all Pretext or Excuſe, the Civil Law admits even ſuch as are otherwiſe *inhabile*, to be *Informers* and *Accuſers* in this Caſe; ſuch as *Slaves* even againſt their own Maſters, *infamous Perſons*, *Women*, *Pupils*, *Soldiers*, &c. (*b*).

11. And tho' it be commonly objected, That it's for the moſt Part very difficult to prove ſuch Conſpiracies, and that yet by the *Roman* Law, the Accuſer was bound to *ſubſcribe his Information*, which they called *Inſcribere in Crimen*, and which imported no leſs than the ſame Puniſhment to the Informer, in Caſe he ſuccumbed in the Ptobation, nay, that ſometimes he was put to the Torture (*c*); yet the Hardſhip is ſoon removed, when we conſider, That Law impoſes no Neceſſity on any Man to accuſe in ſo *ſolemn* and *publick* a Man-

(a) L. 5. §. 6. (b) L. 4. 8. *ff. de Accuſ. junct.* L. 7. 8. *ff. ad Leg.* Jul. *Majeſt.* (c) L. *fin.* C. *de Accuſat.* L. 3: C. *ad Leg.* Jul. *Maj.*

Manner: It being enough for him in that Caſe, privately to acquaint thoſe in Authority with what he knows, without Neceſſity of a ſolemn *Subſcription (a)*.

12. 2*dly*, Whoſoever *ſurrenders a Fort, Caſtle, Garriſon*, &c. committed to his Truſt, by the *Roman* Law, incurs capital Puniſhment *(b)*: Which nevertheleſs is undoubtedly to be taken with this Limitation, That he is not thereto preſs'd by *extreme* and *invincible Neceſſity*. For in that Caſe, (as when Proviſions fail, or ſuch Breaches are made in the Fortifications, as threaten a ſudden Storm, *&c.)* it's ſure far better Service to a Prince or State, to yield a little to Neceſſity, and reſerve their Perſons to ſerve more ſucceſsfully at another Time, than madly to run the Risk of utter Exciſion, by the conquering Swords of an enraged Enemy: It being rather *proud Folly*, than *true Fortitude*, to throw away one's Life, when no *Good*, but much *Miſchief* is thereby done to the Publick, in loſing thoſe Men, whoſe after Services might greatly have contributed towards the retrieving a ſinking State. In ſhort, no Law can tie a Man to what's impoſſible; nor can he be blamed for a Miſadventure, in whoſe Power it was not to prevent it *(c)*.

13. 3*dly*,

(a) *L.* 7. *C. de Accuſat.* (b) *L.* 3. *ff. ad Leg.* Jul. *Maj.* (c) *L.* 50. *ff. de R. J.*

13. 3*dly*, A Soldier's *quitting the Poſt aſſigned him*, if maliciouſly and of Deſign, was by the common Law adjudged high Treaſon; but if it was through Unskilfulneſs, Imprudence, or Cowardice, the Pain was only arbitrary (*a*). Nay, in that Caſe, the Aſſigner of the Poſt to a weak, unskilful, or daſtardly Perſon, was very juſtly judged more blameable than he (*b*). And both *Greek* and *Roman* Hiſtory affords us many notable Inſtances of ſuch Behaviour, which nevertheleſs were never capitally puniſhed (*c*).

14. 4*thly*, A *Renegade*, or he who deſerted over to the Enemy, was always looked upon as one of the moſt flagitious of all Criminals, and juſtly conſtructed a publick Enemy to the State (*d*): And tho' (as has been already remarked) Soldiers could not regularly be put to the Rack or Torture, yet *Renegades* might (*e*).

15. As the Puniſhment of this Crime was capital (*f*), ſo, as a Teſtimony of Mens general Abhorrence of it, every Man is allowed by the common Law, without the Formality of

(a) *Arg. L.* 14. §. 2. *ff. de Cuſtod. reor.* (b) *Arg. d. L.* 14. §. 1. (c) *Vid.* Frontin. *de Stratagem. Lib.* 4. C. 1. *N.* 31. Alexander *ab* Alexandro *Genial. Dier. Lib.* 2. *Cap.* 13. Plutarch. *in Vita* Ægeſilai. (d) *L.* 19. §. 4. *ff. de Captiv. & poſtlim.* L. 7. *ff. de Re milit.* (e) *d.* L. 7. (f) L. 8. §. 2. L. 38. §. 1. *ff. de Pœn.*

of a Sentence, to kill a *Renegade*, where-ever he is found (*a*). Which Puniſhment Law hath very juſtly extended to ſuch as being Priſoners with the Enemy, did not return to their Colours, when an Opportunity offered (*b*); or, by Bribes or Preferments, were enticed to ſerve the Enemy.

16. But beſides, ſuch a *Revolt* is undoubtedly *high Treaſon*; and therefore the very Endeavour is by the common Law, in the ſame Manner puniſhable, as if the Effect had followed (*c*): The Reaſon whereof is elegantly given by *Saluſt*, *Cætera Maleficia*, ſays he, *tum perſequare, ubi Facta ſunt, hoc niſi provideris, ne accidat, ubi evenit, fruſtra Judicia implores* (*d*).

17. Neither did a *Renegade* eſcape the ordinary Puniſhment, tho' thereafter he forſook the Enemy, and returned to his Colours (*e*); unleſs that by his Return he had done eminent Service to the State, in diſcovering Multitudes of others guilty of the ſame Crime; in which Caſe 'twas uſual with the *Roman* Generals, either to mitigate, or ſometimes even to remit the Puniſhment (*f*).

18. 5*thly*,

(a) L. 3. §. *fin. ff. ad Leg.* Cornel. *de Sicar.* (b) L. 5. §. 5. *ff. de Re milit.* (c) L. 3. §. 11. *ff. eod. Junct.* L. 5. C. *ad Leg.* Jul. *Majeſt.* (d) *Bell.* Catelin. *Cap.* 52. (e) L. 3. §. 10. *ff. de Re milit.* (f) L. 5. §. *fin. ff. de Re milit.*

18. 5*thly*, From theſe laſt named the common Law diſtinguiſhes *ſimple Deſerters*, *viz.* ſuch as go not in to the Enemy, but only forſake their Colours, or being out upon *Furlow*, return not at the Day therein prefixed (*a*). As to the Puniſhment of this Crime, we are to diſtinguiſh both Times and Perſons. For if they were but *private Soldiers*, and deſerted *in Time of Peace*, they were only ordained to be degraded, if Foot; and if Horſe, to be expelled the Legion: But *in Time of War*, Deſertion was puniſhable to Death *in both* (*b*); nay, they might be warrantably killed by whoſoever found them (*c*); and dying in that State, all their Goods were confiſcated (*d*); and ſuch as willingly concealed or recepted them, incurred alſo capital Puniſhment (*e*).

19. Yet Deſertion in private Soldiers, was not by the common Law conſtructed *high Treaſon* (*f*); and therefore, if while endeavouring to deſert, they were ſeized and brought back, the Puniſhment was only *arbitrary* (*g*). But if voluntarly they returned, the Puniſhment was commonly remitted (*h*); unleſs

(a) L. 3. §. 9. *ff.* L. 15. *C. de Re milit.* L. 31. *C. locat.* (b) L. 5. §. 1. *ff. de Re milit.* (c) L. 2. C. *quand. lic. cum cuiq; ſin. Jud.* (d) L. 4. C. *de Re milit.* (e) L. 1. C. *de Deſertor.* (f) Anton. Mattheus *de Crimin.* Lib. 48. *Tit.* 2. *Cap.* 2. *N.* 13. (g) L. 4. §. 13. *ff. de Re milit.* (h) L. 1. C. *de Deſertor.*

unleſs they had been Five Years abſent from their Colours, in which Caſe they were to be carried into perpetual Exile (*a*); or unleſs their Numbers were very great; for deſerting in conſiderable Numbers, being a high Aggravation of the Crime (*b*), they were to ſuffer an arbitrary Puniſhment, whenſoever they returned (*c*).

20. But it's otherwiſe when *great Commanders*, ſuch as Generals, Lieutenant Generals, *&c.* deſert, for ſince thereby they become guilty of *high Treaſon* or *Perduellion* (*d*), the very Attempt, tho' without Succeſs, is by the common Law puniſhable as ſuch. The Reaſon of which Difference is pretty obvious; for a private Soldier's Deſertion is at moſt but the Loſs of himſelf to the State, whereas a General very readily draws with him the whole or a greater Part of the Army: And tho' it ſhould fall out that he gets no Followers, yet what can be expected of an Army without their General? *Illud*, ſays *Perdiccas*, *ſcire debetis, militarem ſine Duce Turbam, Corpus eſſe ſine Spiritu* (*e*).

21. Moreover, if in the Heat of Battel Soldiers deſerted their Leaders and fled, this alſo,

(a) *L.* 13. §. *fin. ff. de Re mil.* (b) L. 5. *ff. d. Tit.* (c) *L.* 3. §. 9. *ff. d. Tit.* (d) *L.* 2. *ff. ad. Leg.* Jul. *Majeſt.* (e) *Curt. Lib.* 10. *Cap.* 6.

alſo, if thoſe Leaders thereby periſhed, was *Capital* (*a*). Yet if the Defence of their Commanders was unpracticable, Soldiers that fled were abſolved (*b*). For in ſuch a Caſe ſound Reaſon, and the Law of Nature it ſelf, warrands a Soldier rather to retire and conſult his own Safety, than needleſly ruſh upon inevitable Ruin; *Demonſthenes* his old Aphoriſm, *Vir fugiens denuo pugnabit*, being very applicable to this Caſe.

22. *6thly*, Much Akin to a total Deſerter is he, who *quits his Watch* or Century-poſt; and therefore was obnoxious to the ſame Puniſhment (*c*). And under the ſame File were ranked ſuch *Scouts*, as lingred and came not up to the Army, when the Enemy was advancing (*d*); as alſo a Soldier found *ſleeping in his Century-poſt*, nor are we to wonder here-at, or think it too much Severity, ſince Experience hath long ſince taught, That ſuch Delinquencies in a *Centinel*, have frequently been fatal to a whole *Army* or *City*, and expoſed many Thouſands to the Will of a mercileſs Enemy.

23. *7thly*, Exact Obedience, and profound Reſpect and Reverence to Commanders, being, as

(a) *L.* 3. §. *fin. L.* 6. §. 9. *ff. de Re milit.* (b) *L.* 6. §. 8. *de Tit.* (c) *L.* 3. §. 6. *junct. L.* 10. *ff. eod.* (d) *L.* 3. §. *ff. eod.*

as I have obſerved, the ſureſt Means to preſerve an Army in any tolerable Order, and that without it all military Diſcipline would quickly dwindle into nothing; it was therefore an unviolable Law among the *Romans*, that the leaſt *Reſiſtance* or *Violence* offered by a Soldier to his Commander, was capital *(a)*: This they ſo rigidly obſerved, that the very taking hold of an Officer's Rod or Cane wherewith they were beaten, did not eſcape the ſame Puniſhment *(b)*; the Reaſon whereof was, that in general, *All Contumacy in a Soldier againſt his Leader, was by their Law adjudged a capital Offence (c)*; which, nevertheleſs was aggravated or extenuated, according to the Quality of the *Perſon offended*; it being undoubtedly a Crime of a much higher Nature, to make Reſiſtance, or offer Violence to a general Perſon, or a Tribune, than to a ſimple Centurion *(d)*. Yet it's remarkable, That the ſame very Laws that award this Puniſhment, do at the ſame Time warn Officers to remember, that they are armed Men whom they have under Command, whom therefore they are not permitted to puniſh out of Meaſure *(e)*, that being not ſo much

(a) *L.* 6. §. 1. *ff. de Re milit.* (b.) L. 13. §. 4. *ff. eod.* (c) *L.* 6. §. 2. *ff. eod.* (d.) *D.* L. 6. §. 1. (e) L. 12. §. 2. *ff. eod.*

much as allowed to Maſters over their Slaves, tho' reckoned Part of their Property (*a*).

24. 8. *Whoſoever firſt fled in Battel*, was not only liable to capital Puniſhment, but it was permitted to any Man to kill them, without further Sentence or Solemnity (*b*). Which Puniſhment is in the Opinion of ſome Authors (*c*), incurred even by ſuch as being ſeverely wounded, do retire out of Battel without Orders. Yet in Point of Practice, we find this Severity has been for the moſt Part mitigated; for many Inſtances there are in *Livy*, *Frontinus*, &c. of no more but ſome Mark of Diſgrace put upon a Legion, or Cohort, who had firſt given Ground to the Enemy; but the higheſt we read of was *Decimation*.

25. 9. No Soldier, without Liberty from his Commander, was allowed ſo much as to *quit his Rank*, or go aſide, while the Army was marching; upon Pain of Death (*d*).

26. 10. Whoſoever, whether Soldier or other, either jumped over a City Wall, or entred or went out by unuſual Ways, was by the *Roman* Law, puniſhable to the Death (*e*).

(a) §. 1. *fin. Inſt. de his qui ſui vel alien. ſunt.* (b) L. 6. §. 3. *ff. de Re milit.* (c) Julius Ferrettus *de Re milit. Page* 67. n. 12. (d) L. 3. §. 16. *ff. de Re milit. junct.* L. 8. §. 1. *ff. de Pœn.* (e) §. 10. *Inſt.* L. *fin. ff. de Rer. Diviſ.* L. 3. §. 17. *ff. de Re milit.*

Which ſevere Sanction, it ſeems, took its Riſe from the known Inſtance of *Romulus* his thus puniſhing his Brother *Remus*; and was by Law extended to all Kind of Detriment done to the Fortifications of a Place (a); but both theſe are by modern Writers very juſtly reſtricted to Times of War, and to Caſes when it's not at all poſſible to enter or eſcape by the ordinary Way; it being allowed to Soldiers overpowered by the Enemy, to make their Eſcape as they can. *Laſtly*, Moſt Interpreters reſtrict this Sanction to *Frontier Towns*.

27. 11. It hath been the Obſervation of all Ages ſince ever military Diſcipline took Place, that there is nothing more pernicious to an Army, than *Sedition* and *Mutiny*, *viz.* Either when the Soldiers are divided among *themſelves*, or when all or Part of them are in a plain Rebellion againſt their *General*. This military Crime was by the *Romans* thought to be of ſo deteſtable a Nature, that they allowed not Mutineers the Name of *Citizens* or *fellow Subjects*, far leſs *Soldiers*; *Quod Nomen*, ſays *Germanicus* (b), *huic Cœtui dabo? Militeſne appellem, qui Filium Imperatoris veſtri Vallo & Armis circumſediſtis? an Cives*,

(a) *D.* §. 10. *Inſt. de R. D.* (b) Tacit. *Annal.* Lib. 1. *Cap.* 42.

Cives, quibus tam projecta Senatus Auctoritas? And indeed such Men are justly reckoned so much worse than *Enemies*, by how much they more contribute to publick Ruin, than generally the Enemy by himself is able to do; and therefore that an exemplary and sudden capital Punishment be inflicted on them, is the great Interest of the State (*a*); tho' for the most part it's scarce safe in such a Case, to punish all the Guilty; but the Leaders and Heads of the Factions being taken off, *ad omnes Metus, ad paucos Pœna perveniet.*

28. Various have been the Punishments inflicted on *Mutineers*, according to the *Nature* and *Degree* of their Guilt. For among the *Romans*, some Times the Heads and Authors of the Sedition, were punished as *common Murderers* (*b*): At other Times they were only carried into *perpetual Exile*; but often thrown to wild Beasts to be devoured (*c*). But the common Multitude was generally *decimated*. But if the Mutiny proceeded no further than *Clamour* or *Scolding*, an arbitrary Punishment was thought sufficient (*d*); unless such Words were uttered as plainly tended to the Ruin of the Prince or State, this no doubt

(a) L. 10. *ff. de Appellat. junct.* L. 3. §. 9. *ff. de Re milit.* (b) L. 3. §. 4. *ff. ad Leg.* Cor. *de sic.* (c) L. 38. §. 2. *ff. de Pœn.* (d) L. 28. §. 3. *ff. de Pœn.* L. 3. §. 20. *ff. de Re milit.*

rendring them obnoxious to the Puniſhment of *Traitors (a)*. Nor could it here ſuffice to mitigate either the Crime or Puniſhment, that no Hurt to the Publick did actually inſue, ſince the Authors of ſuch Seditions have by their wicked Endeavours, given abundant Teſtimony of their deep and inveterate Malice againſt their Country, and done what in them lay, to bring Ruin and Deſtruction upon it.

29. 12. *Wounding* a Fellow-Soldier with a *Sword*, or any other *deadly Weapon*, was, according to the *Roman* Conſtitution, capital *(b)*; but if with a Sword in the *Scabbard*, a *Cane* or *Stone*, &c. the Puiſhment was only *Caſhiering (c)*: The Reaſon of which Difference was, the preſumed Deſign of the Inflicter *(d)*. All which was very ſagely contrived by the *Roman* Law-givers, for taking off all Excuſe for *private Revenge*, and for preventing that barbarous Cuſtom of *Duelling*; which, tho' of old eſteemed commendable in many Nations, where the common Cuſtom was to decide private Quarrels with the Sword, yet certainly there is nothing more pernicious to Mankind: For here the gallanteſt Men, who

ſeem

(a) L. 1. *ff. ad Leg.* Jul. *Majeſt.* (b) *L.* 6. §. 6. *ff. de Re milit.* (c) *d. L.* 6. §. 6. (d) *L.* 1. §. 3. *ff. ad Leg.* Cornel. *de ſicar. junct. L.* 14. *ff. eod. Arg. L.* 18. *C. ad Leg.* Jul. *de adult.*

ſeem born for the publick Good, and fitted to do moſt eminent Service to their Country, have many a Time miſerably periſhed, throw a fooliſh miſtaken Notion of Honour. In ſhort, as this private Duelling ſeems to be an Invention of the great Enemy of Mankind, ſo has it been very juſtly condemned by ſeveral *Canons* and *general Councils*, as eminently deſtructive to Society. For by this, all legal Trials and Order of Law is quite out-dated, and Juſtice openly and avowedly violated; it often falling to the Share of the injured Party to be worſted in Fight. Beſides, that by this Method of deciding Controverſies, Providence is plainly tempted, eſpecially if a Duel be fought for *Diſcovery* of a *Truth*. *Laſtly*, If *Murder* be a flagitious Crime, then certainly this which has ſo direct a Tendency towards it, can never be warrantable. Nay, ſurely thoſe who practiſe it, muſt be concluded to have firſt put a very great Violence upon their own Nature; for we need not ſingle out any one Man's Inclination; the Nature of Mankind doth certainly avert both killing and being killed: Yet when that *Phantaſm*, that *Chimera Honour* has once poſſeſt the Mind, no Reluctance of Humanity is able to make Head againſt it.

30. The wiſeſt Courſe then, that a Soldier in this Caſe (without the leaſt Impeachment to his *Honour*) can take, is peremptorly to

decline accepting all *private* Challenges; but as much as poſſible, to diſtinguiſh himſelf by a gallant and heroick Behaviour in all *publick* Ingagements, when the Service of his King or Country calls him to it. And this he will find exemplified to him, by the braveſt Soldiers and moſt eminent Commanders in former Ages, who with Scorn and Indignation rejected ſuch Challenges, even when offered by a *publick Enemy*. Thus *Marius* returned Anſwer to a *German* Leader, who had ſent him ſuch a Defiance, *That if he was weary of his Life, he might hang himſelf* (*a*). And to the ſame Purpoſe was the Anſwer of *Antigonus* to *Pyrrhus*, and of *Auguſtus* to *Mark Antony* (*b*). And certainly our Chriſtianity is very ill beſtowed upon us, if what was *deteſted* and *abominated* by Heathens, ſhall be now eſteemed noble and heroick.

31. Yet here we muſt admit of one Exception, *viz.* When a Duel by *Command* or *Conſent* of lawful Authority, is undertaken againſt a *publick Enemy*, for the *publick Good*; ſince how far ſoever any War is *juſt* and *lawful*, ſo far is ſuch a *Duel warrantable*. And beſides the known *Roman* Inſtances of *Torquatus*, *Corvinus*, *Marcellus*, *Scipio*, *Æmilianus*, and others;

(a) Frontin. *de Stratag. Lib.* 4. *Cap.* 7. *N.* 5. (b) Plutarch *in their Lives.*

others; it ſeems to be ſufficiently warranted, by the one memorable Duel betwixt *David* and *Goliath* (*a*). And it's very obſervable, That ſuch ſolemn publick Duels have many Times had a conſiderable Influence on the Event of the War; as among many others, *Livy* tells us in that notable Inſtance of *Torquatus*. Yet ſtill it muſt be owned, That, generally ſpeaking, this Method of terminating pnblick Controverſies, as it's the Effect of *Precipitancy*, and Raſhneſs of Counſel, ſo does it rarely afford *Safety* to the State, nor always put an End to the Diſpute; as appears by the Event of that remarkable Duel betwixt the *Horatii* and *Curiatii*. And therefore Writers on the Politicks, have always thought it the ſecureſt Way, when the Liberty and Property of *All* is at the Stake, that *All* ſhould ſhare in the Ingagement; ſince otherwiſe not only will the Vanquiſhed have Cauſe to accuſe his own *Temerity*, but even the Victor will not be abſolutely *ſecure*. But I proceed.

32. 13. *Soldiers are to do Violence to no Man, and be content with their Wages* (*b*); and before this was expreſly injoined by the *Baptiſt*, *A. Gellius* (*c*) delivers it as a Part of the ancient *Roman* military Oath, *In Exercitu decemque millia Paſſuum prope, Furtum non facies*

(a) 1 Sam. 17. (b) Luke 3. 14. (c) *Noct. Attic. Lib.* 16. *Cap.* 4.

facies Dolo malo, ſolus neque cum pluribus. And hence it is that *Pillaging* and *Plundering* the Country, is by the common Law puniſhable with the utmoſt and moſt exemplary Severity; it not only being in the general a capital Crime *(a)*, but the Offenders ſo far declared Enemies to humane Nature, that Law has armed every private Perſon againſt them, and juſtly expoſed them to the Fate which *Cain* feared *(b)*. And ancient Hiſtory atteſts, That no Crime has been more ſeverly puniſhed by the moſt expert and famous Generals of old. Thus *Sueton (c)* tells us, that *Tiberius* inflicted capital Puniſhment on a Soldier, for ſtealing a Peacock. And *Sertorius* adjudged a whole Cohort to be put to Death, for pillaging the Country *(d)*. Nay *Tamerlane*, tho' a barbarous Tartar, on Complaint that a Soldier had upon March gone aſide, and drunk a Woman's Pail of Milk, cauſed immediately his Stomach to be ript up, ſo that the Blood and Milk ran out together. But the Emperour *Alexander Severus* (who upon that Account very well deſerved the *Sirname*) never miſſed to puniſh to Death even ſuch as went aſide off a March into Mens Houſes or Poſſeſſions, tho' without any Intention of robbing

(a) *L.* 28. §. 10. *ff. de Pœn.* (b) Gen. 4. 14. *L.* 1. C. *quand. lic. unicuiq. ſin. jud.* (c) *in* Tiberii *Vita* Cap. 60. (d) Plutarch *in vita* Sertorii.

bing or pilfering: Whereby it came to paſs, that whitherſoever he marched, his Army was liker to a Company of *Senators* than *Soldiers (a)*. *Laſtly*, Hence it is, that by another Clauſe in the ancient *Military Oath*, they engage to make publick Profeſſion of all Plunder taken from the Enemy, within Three Days.

33. But the Puniſhment was generally more moderate, if the Theft was committed, not in the *Country*, but the *Camp* it ſelf; in which Caſe, the Offender's right Hand was ſometimes ſtruck off *(b)*; ſometimes alſo Blood was let at his right Arm in View of the Army; which, if we will believe *A. Gellius (c)*, was rather by Way of *Medicine* than *Puniſhment*.

34. Under this File alſo may juſtly be ranked all *Pirates at Sea*, who do yet far better merit both the Name and Puniſhment of *common Enemies* of Mankind. And therefore, by the Civil Law, not only themſelves, but all ſuch as recepted or abetted them, were adjudged to an ignominious Death *(d)*.

35. 14. The *detaining of Soldiers Pay* by an Officer, was puniſhed by caſhiering, and

(a) Æl. Lamprid. *in ejus Vita.* (b) Frontin. *de Stratag. Lib.* 3. *Cap.* 1. *N.* 15. (c) *Noct. Attic. Lib.* 10. *Cap.* 8. (d) *Arg. L.* 3. §. 3. *ff. de Incend. ruin. Naufr.*

and paying the Quadruple to the *Fisk* (a). And much Akin to these, were such as took Money for excusing or dismissing of Soldiers from their Colours; and therefore their Punishment was the same (b).

36. 15. *Ensigns* and *Standards* were at first invented, that when Soldiers were dispersed in Battel, each Man might with Ease recover his own Station (c). And therefore, whosoever deserted his Colours in Battel, or suffered them to be taken by the Enemy, has in all Ages been adjudged guilty of a most atrocious Transgression, and most severely punishable. Thus *Curtius* tells us (d), That the ancient *Indians*, under Command of their King *Porus*, had carried before their Foot Army the Image of *Hercules*, which he who failed to bring off from Battel, was to dy for it. Yet among the *Romans* we find no particular Punishment awarded to the Crime of suffering Ensigns or Colours to be taken by the Enemy: Only *Alexander* ab *Alexandro* (e) informs us, That sometimes such Delinquents were punished capitally, and at other Times put to some ignominious Work or Drudgery: Nay, some generous Commanders

(a) *L. fin.* §. 9. C. *de Offic. præfect. præt* Afric. (b) *L.* 6. *ff. ad Leg.* Jul. *repetend. junct. L.* 1. C. *eod.* (c) Veget. *de Re milit. Lib.* 2. C. 13. (d) *Lib.* 8. *Cap.* 14. (e) *Dier. Genial. Lib.* 2. *Cap.* 13.

ders among them, have judged the Crime it ſelf to be ſo great a Puniſhment, that they have refuſed to inflict any other (*a*): And others, when the Event of a Battel began to turn dubious or dangerous, have thrown the *Aquila* into the Midſt of the Enemies, thereby to excite the Soldiers Courage to recover it.

37. 16. *Selling* or otherwiſe *diſpoſing* upon *Arms*, nay even *loſing* them in Battel, was always eſteemed by the Antients a ſhameful and ignominious Thing in a Soldier (*b*): And both *Greek* and *Roman* Hiſtory afford many ſtrange Examples of Soldiers who choſe rather to abandon their Lives than loſe their Arms. In ſhort, it was thought diſgraceful and moſt unworthy of a Soldier, to ſurvive ſuch a Loſs; and therefore ſuch as were of ſo degenerous a Spirit, as to part with all or moſt of their Arms, were in the *Rigour of Law* looked upon, and puniſhed as *Deſerters* (*c*); tho' in *Clemency* the Puniſhment was ſometimes changed to *Degradation* or *Caſheiring* (*d*). But if a Soldier ſtole, ſold, or otherwiſe diſpoſed upon, not *his own*, but a *Fellow Soldier*'s Arms; he was to be puniſhed at Diſcretion, and commonly

(a) Cæſar *de Bell.* Gall. *Lib.* 4. Cap. 25. (b) *L.* 2. §. 2. *ff. de Captiv.* (c) *L.* 14. §. 1. *ff. de Re milit.* (d) *L.* 3. §. 13. *ff. eod.*

monly was degraded (*a*). Nay, ſo great was the Care of the *Roman* Generals about Arms, that *Alexander* ab *Alexandro* (*b*) tells us, That a Soldier his neglecting to keep them neat and clean, or ſuffering them to contract Ruſt, &c. eſcaped not their ſevereſt Cenſure.

38. 17. So tranſcendently high were the Spirits of the ancient *Romans*, that even the Caſe of ſuch as were *taken Captives* by the Enemy, was always very unfavourable with them: Nay, it was looked upon as a military Crime, and did not altogether eſcape unpuniſhed. For, beſides that during their Captivity, they forfeited all the Privileges of free born Subjects, which (according to their own Principles) was a *Loſs ineſtimable* (*c*), they were alſo deprived of all the Pay that fell due during their Captivity (*d*); and at their Return were degraded (*e*).

39. Yet learned modern Expoſitors of the common Law are of Opinion, That this ſtrange Piece of Severity took no Place when the Party was nowiſe acceſſory to his being taken, *viz.* when it fell out either through the Daſtardlineſs or Unskilfulneſs of his Commander, or purely by Chance of War: Which Opinion wants not its Foundation

(a) *d. L.* 3. *c.* 14. (b) *Lib.* 2. *Cap.* 13. (c) §. *fin. Inſt. qui & quib. ex Cauſ. man. non lic. L.* 106. 176. §. 1. *ff. de R. J.* (d) *L.* 1. *C. de Re milit.* (e) Alexander *ab* Alexandro *Genial. Dier. Lib.* 2. *Cap.* 13.

tion in Law *(a)*. For ſince a Soldier in this Caſe, has done all that could be required of humane Prudence or Courage, the Condition on which his Pay was ſtipulated to him, ſeems thereby purified, *viz.* That he ſhould faithfully ſerve: And *no Law can tie a Man to Impoſſibilities (b)*. Beſides, That by the Rule of common Equity, it's not a little barbarous to add Affliction to the afflicted. And tho' a true Deſerter, when reſtored *ex Gratia*, cannot indeed claim the Pay that fell due during his Deſertion, unleſs by a ſpecial Indulgence of the Prince *(c)*; yet his Caſe widely differs from that of a *Captive*, (tho' the Rigour of Law levels them) ſince Deſertion never miſſes to be accompanied with ſome Degree of *Treachery*; whereas a Man may be (and many often are) taken captive, through the Fault of his Commanders, or Chance of War. And for the ſame Reaſon it is, that *ſick* or *wounded* Soldiers received their full Pay during their Abſence for Cure *(d)*.

40. 18. But, leſt this ſhould give Occaſion to Cowards or Sluggards to counterfeit Sickneſs; therefore ſuch as were found to have done ſo, were of Old ordained to be puniſhed as

(a) *L.* 3. §. 12. *L.* 5. §. 4. *L.* 7. *ff. de Re milit.* (b) *Arg. L.* 39. *ff. de R. J. L.* 8. §. 7. *ff. de cond. Inſt.* L. 4. §. 5. *ff. de Statu Lib.* (c) L. 10. §. 1. *ff. de Re milit.* (d) *Arg.* L. 4. § 6. *ff. de Statu Lib.*

as Traitors (*a*). Nay, whoſoever mutilated their own or their Childrens Bodies, ſo as thereby deſignedly to render them unfit for carrying Arms, (a Practice common enough in thoſe elder Times, when all were preſſed to the Wars) were adjudged to perpetual Exile (*b*).

41. 19. *Laſtly*, Plurality of Poſts in an Army, nay, even a Soldier's liſting in Two different Legions, was expreſly prohibited, upon a ſevere pecuniary Mulct (*c*): Which was very conſonant to *Reaſon* and *Juſtice*, ſuch a Management implying no leſs than *Peculate* or Theft from the Publick; ſince no Man is able to be in Two Places at once.

42. Yet here it's in the general to be remarked, That moſt of the fore-mentioned Puniſhments are only recorded in the Laws as a Kind of *Vidimus* to a General or Court-Martial; which therefore they might ſafely *mitigate*, (but never *inhanſe*) in Conſideration of the Circumſtances of the Fact; which in this Caſe may very well be done, when it's conſidered, That for the moſt Part military Puniſhments (as has been already obſerved) are much ſeverer than thoſe awarded to the ſame Crimes, when acted by other Men.

Modern

(a) L. 6. §. 5. *ff. de Re milit.* (b) L. 1. C. Theod. *de Fili milit.* L. 4. 5. C. Theod *de Tyron. Funct.* L. 4. §. 12. *de Re milit.* (c) L. 5. C. *qui mil. Poſſ.*

Modern Laws and Customs relating to this Title.

43. As we have now no *Tyrones* or *Novices* in the *Roman* Acceptation; so what has been said § 6. with Respect to these, is in our Days wholly outdated. But as to *Drunkenness*, that Circumstance is so far from extenuating a Soldier's Guilt, that, according to modern *French* and *Dutch* Articles of War (*a*), it is a great Enhansement of it; And in Her late *Majesty*'s Articles for Her Forces beyond Seas (which, by the Way, are appointed to be read at the Head of each Regiment every Month (*b*)) it is plainly declared (*c*), *That no Officer nor Soldier shall be allowed to excuse himself for any Fault committed by him, upon Pretence of his being drunk, at any Time whatsoever.* Nay, in the same Articles (*d*), we find *Drunkenness* in some Cases declared a Crime by it self, and severely punished; for there it is appointed, *That if any Officer shall be found drunk the Day of his Guard, he shall be*

(a) Dutch *Art.* 67. (b) *Art.* 69. (c) *Art.* 6. (d) See the said *Art.* 6.

be cashiered for it; and that if any Soldier shall be found drunk when he is upon Duty, he shall receive such corporal Punishment, as a Court-Martial shall think fit. But, by the *Dutch* Articles, such a Soldier is ordained to be drummed out of the Army (*a*): Which, as it is undoubtedly a far better Constitution than that of the *Romans*, so we have much ancienter Precedents for it. For *Diogenes Laertius*, in the Life of *Pittacus*, tells us, That he had made a Law awarding double Punishment to a Man in Drink. And indeed common Experience tells us, That such flagitious Crimes are daily acted by Men (especially Soldiers) discomposed by Drink, as they would have abhorred the very Thoughts of, in their soberer Moods. Nor was it in vain that the ancient Poets (whose Writings do generally as well *instruct* as *delight*) instead of *Horses*, made *Panthers*, the cruellest of all Animals, to draw the Chariot of *Bacchus*.

44. As to fighting an Enemy (tho' successfully) without Orders, and its Punishment; that unparallelled Piece of *Roman* Severity, is long since in Desuetude (*b*): For the Action *now* is generally excused, if not rewarded, lest when a commodious Occasion of doing an eminent

(a) *Art.* 66. (b) Groenweg. *de Legib. abrog. ad L.* 3. §. 15. *ff. de Re milit.*

eminent Piece of Service offers it ſelf, ſubaltern Commanders and Leaders of Parties ſhould induſtriouſly let it ſlip, as fearing more the Wrath of their own *General*, than all the Impreſſions of the *Enemy*.

45. *Treaſon* or *Treachery* in a Soldier, is ſtill in our Days eſteemed the moſt flagrant and execrable of all Crimes, and therefore is always puniſhed with the utmoſt Rigour. And in particular, Her late *Majeſty*, in Her Articles of War for Her Forces beyond Sea, "hath "declared, (a) That whoſoever ſhall hold "Correſpondence with any Rebel or Enemy "of Her Majeſty, or ſhall give them Advice "or Intelligence, either by Letters, Meſſen-"gers, Signs, or Tokens, or any Manner of "Way whatſoever, ſhall ſuffer Death. And "whatever Regiment, Troop, or Company, "ſhall treat with ſuch Rebels or Enemies, or "enter into any Condition with them, with-"out Her Majeſty's Leave, or of the General, "Lieutenant-General, or of the chief Com-"mander in his Abſence; the Officers and "Soldiers of ſuch Regiment, Troop, or Com-"pany, who are found guilty or conſenting "thereto, ſhall dy for it. Yet, leſt the Generality of the Article ſhould be a Snare even to honeſt Men, there is ſubjoined a Clauſe

R in

(a) *Art.* 9.

in the ſame Article, declaring, " That what-
" ſoever Officers or Soldiers can prove, tha
" they did their Utmoſt to reſiſt and avoi
" ſuch a Treaty, and were no Partakers o
" the Crime, they ſhall not only go free, bu
" ſhall alſo be rewarded for their Conſtancy
" and Fidelity. But, by the preſent *ordina-
ry* Law of *Britain*, correſponding with Ene-
mies is *high Treaſon* (*a*).

46. As to *concealing Treaſon*, the Subſtance of the *Roman* Law is ſtill retained; and par-
ticularly the *States-General*, in their Inſtructi-
ons of War (*b*), have declared, *That whoſo-
ever is privy to ſuch traiterous Conſpiracies, and
does not immediately reveal them to his Captain,
or to the Colonel of the Regiment, ſhall ſuffer
the ſame Puniſhment with the Conſpirators and
principal Actors.* And the Queen of *Bri-
tain*, in the forementioned Articles (*c*), hath almoſt in the ſame Words declared,
" That whoever ſhall not reveal to his ſupe-
" rior Officer, any Conſpiracy or Engagement
" in any traiterous or rebellious Act, either
" againſt Her Majeſty's Perſon or Govern-
" ment, ſo ſoon as ever it ſhall come to his
" Knowledge, ſhall be judged equally guilty
" with the Contrivers of ſuch Plot or Con-
" ſpiracy,

(a) *Act. Anno* 7. Annæ *Reg.* (b) *Art.* 6. (c) *Art.* 10.

" ſpiracy, and conſequently, ſhall ſuffer the " ſame Penalty.

47. The *delivering* up a *Fort* or *Gariſon* to the Enemy, is the ſame Way puniſhable now, as by the *Roman* Law; the Penalty whereof the States of *Holland* have declared capital *(a)*. And thus alſo Her late *Majeſty* hath declared in the above-cited Inſtructions *(b)*, " That " whoever ſhall ſurrender any Town or For- " tification, which they commanded to de- " fend, or ſpeak Words, or make any Shew " towards a Surrender, or diſpute the Order " of the Gariſon, they ſhall dy for it. But all this is ſtill to be underſtood with the above Exception of *extreme Neceſſity*. And there- fore it was, that thoſe gallant Men who ſu- ſtained a Three Years and an Half's Siege of *Oſtend*, were, after the Surrender, upon very honourable Terms, received by that great Captain *Maurice* Prince of *Orange*, not as *van- quiſhed*, but as Men wearied with *repeated Victories (c)*.

48. But becauſe *Captains* of *War-ſhips* are in our Days very juſtly compared to Governours of Forts, Caſtles, *&c.* therefore it is that all the Maritime Powers of *Europe* do agree in puniſhing a Captain of a Man of War, who, except in extreme Neceſſity, ſurrenders his

(a) *Art.* 53. (b) *Art.* 27. (c) Meteran. *Hiſtor. Lib.* 25.

Ship to the Enemy, in the ſame Manner as the Governour of a Gariſon (*a*). But the Vice-Admiral of *Holland* in the Year 1606, having in an Engagement (when there was no Hope of eſcaping) blown up his Veſſel, ſo that himſelf and all the Crew periſhed, it hath ſince been moved as a Caſe rather of Conſcience than Law, whether in the like Circumſtance, that ought to be the Practice of all Commanders at Sea? But the Queſtion muſt undoubtedly be reſolved in the Negative: It being irrefragably certain, That when Men thus caſt themſelves Headlong upon Ruin, no Inqueſt would return their Murder in any other Form, than what the *Engliſh* call *Felones de ſe*. And if it be a criminous Barbarity wilfully to kill a *Friend* or *Aſſociate* in the War, certainly it muſt be far more flagitious, for a Man deliberately to deſtroy *himſelf*. And tho by this deſperate Practice, they do not directly and immediately intend their own Deſtruction, but rather to do Miſchief to the Enemy, and atchieve a glorious Victory to the Prince or State whom they ſerve; yet ſtill it muſt be granted, That however good the End be, ſince the Means of attaining it carries neceſſarily their own Ruin, it can never be

(a) *Edict of the States of* Holland, *publiſhed* 27 January 1665.

be ſaid that the Event of ſo deliberate an Action is meerly to be attributed to the Chance of War.

49. The *deſerting* of a Poſt through *Cowardice*, *Confuſion*, &c. has, in our Days for the moſt Part, been only puniſhed at Diſcretion. Thus Hiſtorians of the laſt Age tell us, That a *Spaniſh* Colonel, for quitting his Poſt, was only degraded to be a Captain of Horſe, as unfit for a higher Command *(a)*: And *Henry* Prince of *Orange* only puniſhed an Enſign of Foot with Baniſhment, who had been guilty of the like Fault.

50. It will ſcarce be needful here to ſpeak of the Crime and Puniſhment of a *Renegade* in our Days; the near Approach to it, nay, any Action that may raiſe a juſt Suſpicion of a Man's Intention to run over to the Enemy, being now a-days capital. Thus the States of *Holland*, in their *military Inſtructions*, have *declared it puniſhable to Death in a Soldier, to be found at a greater Diſtance than a Cannon-ſhot from the Camp* (*b*), *or to ly all Night out of the Gariſon, without his Captain's Permiſſion* (*c*). And this, becauſe ſcarce any other Conſtruction can be made of ſuch a Practice, than an Intention to deſert to the Enemy. And in the *Britiſh* Articles for the Forces beyond

(a) Meteran. *Hiſtor. Lib.* 27. (b) *Art.* 21. (c) *Art.* 40.

Sea, it is expreſly provided (*a*), *That when any March is to be made, every Man who is ſworn ſhall follow his Colours, and whoſoever ſhall without Leave ſtay behind, or depart above a Mile from their Camp, out of the Army, without Licence, ſhall dy for it.* Which Articles do alſo expreſly *prohibit all Officers to ly out ſo much as one Night from the Camp, Quarters, or Gariſon, without their ſuperior Officers Leave, upon Pain of being puniſhed for it, as a Court-Martial ſhall think fit*; nor is any Officer or Soldier allowed *to go any By-way to the Camp, or other than the common Way laid out for all*; *upon Pain of being puniſhed as aforeſaid* (*b*).

51. A capital Puniſhment is alſo at this Day, generally awarded beyond Sea, to *ſimple Deſerters*, and ſuch as come not up to the Army, till after the Days of their *Furlow* expire (*c*). But in Point of Practice, the Puniſhment there, for the firſt Fault, is commonly only ſtigmatizing in the Fore-head; unleſs the Greatneſs of the Number of Deſerters require ſome Examples for Terror of others; in which Caſe they ordinarily throw the Dice, and theſe alone upon whom the exterminating Lot doth fall, are hanged or ſhot to Death. But in Caſe of reiterating the Crime, all Deſerters now a-days are to dy with-

(a) *Art.* 22. (b) *Art.* 31. (c) Dutch *Art.* 26.

without Mercy. Yet the modern Cuſtoms of *Europe* allow not ſuch to be killed by any that find them, unleſs they be taken robbing or plundering the Country. *Laſtly*, According to Her late *Majeſty*'s Articles of War (*a*), Deſerting, in all Caſes, is capital; for there it is appointed, "That all Officers or Soldiers that "ſhall deſert, either in the Field, upon a "March, in Quarters, or in Gariſon, ſhall "dy for it. And that all Soldiers ſhall be re-"puted and ſuffer as Deſerters, who ſhall be "found a Mile from their Gariſon, or Camp, "without Leave from the Officer command-"ing in Chief. Nay, not only downright deſerting the Army is capital, but even liſting in another *Cors*: For, by the ſaid Articles (*b*), "All Officers and Soldiers are expreſly prohi-"bited to leave their Colours, and liſt them-"ſelves into any other Regiment, Troop or "Company, without a Diſcharge from the "Commander in Chief of the Regiment, "Troop, or Company in which he laſt ſerved, "upon Pain of being reputed a Deſerter, and "ſuffering Death for it; and in Caſe any Offi-"cer ſhall receive or entertain any Non-com-"miſſion Officer or Soldier, who ſhall have "ſo deſerted or left his Colours without a "Diſcharge, ſuch Officer is to be immediate-"ly

(a) *Art.* 23. (b) *Art.* 24.

" ly caſhiered. Yet, according to theſe ſame Articles, ſtaying out after the Days of a Furlow are elapſed, is not ſo ſeverely puniſhable as by the Civil Law, and the Cuſtom of Neighbour Nations: For thereby it is only declared (*a*) " That whoever is abſent long-
" er than the Time limited in his Paſs for his
" Abſence, ſhall be reſpited, and not allow-
" ed the Muſter, without Order from the
" Crown, the General, or other Commander
" in Chief of the Forces. And that the ſaid
" Time may be diſtinctly known, and to
" prevent Colluſion, all Paſſes and Licences
" for being abſent, are ordained to be brought
" to the Muſter-maſter, who is required to
" enter the ſame in a Book fairly written (*b*).

52. But as to His *Majeſty*'s Forces within *Britain*, becauſe by the *Engliſh* Law no Man can be tried for a Crime, otherwiſe than by a *Jury*; therefore theſe many Years paſt, almoſt in each Seſſion of Parliament, a temporary Act has been made, diſpenſing with the Privilege of the Subject, with Reſpect to Soldiers within the Dominions; and in particular, expreſſing the Penalties of *Mutiny* and *Deſertion*, which by Act *Anno* 12. Annæ *Reg.* are only declared to be *arbitrary*, and not to extend to *Life* or *Limb*; and they who *con-*

ceal

(a) *Art.* 39. (b) *Art.* 39.

ceal Deſerters, or purchaſe Arms or Clothes from them, are by the ſaid Acts to forfeit 5 Lib. But in *Anno* 1715, upon an Occaſion too well known, there was a temporary Act made (to laſt for ſome Months only) for puniſhing *Mutiny* and *Deſertion* capitally, as beyond Sea.

53. As to *forſaking* a *Centinel* Poſt, *&c.* which I have mentioned in the ſixth Place, the ſame Puniſhment as of old, is thereto awarded by the modern *Dutch (a)* military Inſtructions: And it's generally the Opinion of learned Writers on theſe Heads, That an Officer is at Liberty, and has his Choice, whether to kill or only to beat a Centinel whom he finds aſleep. And the *Britiſh* Articles declare, *(b) That a Centinel who ſhall be found ſleeping in any Poſt, Gariſon, Trench, or the like, (while he ſhould be upon his Duty) ſhall ſuffer Death.* And as to forſaking a Centinel-poſt, the ſame Articles expreſs *(c), That if a Centinel or Perdu ſhall forſake his Place before he be relieved or drawn off, or upon Diſcovery of an Enemy, ſhall not give Warning to his Quarters, according to Direction, he ſhall ſuffer Death.*

54. *Reſiſting Officers* in executing their Duty, is by all modern Rules of War, ſtill adjudged capital; and in particular it's expreſly ſo provided

(a) *Art.* 27. (b) *Art.* 36. (c) *Eod. Art.*

vided by the States of *Holland* (*a*). And hence it was that an Officer there, having ſome Years ago, killed a private Soldier, who had offered Violence to him, was ſolemnly abſolved by their grand Council of War (*b*). And ſince inferior and ſubaltern Commanders, do undoubtedly ow the ſame Reſpect to their Superiors, that private Soldiers do to them; therefore by the modern *European* Conſtitutions, all Contumacy in Subalterns, againſt their Colonels or general Perſons, is equally capital (*c*). And by the foreſaid *Britiſh* Articles, *If any inferior Officer or Soldier, ſhall refuſe to obey his ſuperior Officer, he is to be puniſhed with Death* (*d*). But if any ſuch Officer or Soldier ſhall only behave himſelf diſreſpectfully, towards the General, *&c.* or ſpeak Words tending to his Hurt or Diſhonour, he is to be puniſhed according to the Nature and Quality of the Offence, by the Judgment of the general Court Martial (*e*). Yet if a Soldier preſume to reſiſt any Officer in the Execution of his Office, or ſhall ſtrike, or lift up his Hand to ſtrike, or ſhall draw or offer to draw, or lift up any Weapon againſt his ſuperior Officer, upon any Pretence whatſoever, he is to die for it. And even by a late *Engliſh* Act

(a) *Art.* 77. (b) Voet. *de Jur. milit. Cap.* 4. §. 25. (c) Dutch *Inſtruct. Art.* 57. (d) *Art.* 16. (e) *Art.* 11.

Act of Parliament (*a*), a Soldier (comprehending marine Regiments) his reſiſting his Officer, is declared *Felony*. But the Act it ſelf declares alſo, *That this is nowiſe to abridge the Sovereign's Power, in making Articles of War.*

55. But ſtill the above mentioned *Caveat* touching ſupercilious Behaviour of Officers towards thoſe under their Command, is very fit to be obſerved even in our Days. For if Chaſtiſement be found to have exceeded all Bounds, Redreſs will undoubtedly be given. Thus ſome Years ago, a Captain of Horſe in the *Dutch* Service, having exceeded Meaſure in chaſtiſing a Trooper, and with his Sword cut off his Noſe, was by their grand *Court Martial*, fined in 120 *Florines*, to the Party injured.

56. *Forſaking Ranks*, or going aſide without Leave, while the Army is marching (which I have mentioned in the ninth Place) is in our Days, for the moſt Part, only puniſhable at *Diſcretion*. But in this Caſe, it will not avail for an Excuſe, that they have a juſt and neceſſary Cauſe for going aſide, unleſs the Affair be ſuch as ſuffers no Delay.

57. As to *entring a Camp or City by unuſual Ways*, the Puniſhment of that, according to the

(a) *Anno* 7. Annæ *Reg.*

the *Britiſh* Articles, is only arbitrary (*a*). But by the *Dutch* Inſtructions, it's capital (*b*).

58. By the Cuſtom of the *Low Countries*, the *Ring-leaders* of a *Mutiny* are commonly either hanged, beheaded, or ſhot to Death (*c*). But if theſe cannot be diſtinctly known from the reſt; then, as many of them as the Court Martial, or Commander in Chief thinks fit, are taken by Lot, and hanged up in View of the Army. Further, according to the *Dutch* Articles, all ſuch as keep *Night Conventicles*, ſecret Meetings, *&c.* are puniſhable as *Mutineers* (*d*). But if Officers be found guilty of ſuch Practices, they before the reſt, are to be puniſhed to the Death, as Ring-leaders of the Mutiny (*e*): Which alſo has frequently been extended even to *Serjeants*. But by Her late *Majeſty*'s Rules and Articles for Government of her Land Forces beyond Sea, *Mutiny* in general, whether of Officers or Soldiers, or both, is *capital*. And in particular, "If any "Number of Soldiers preſume to aſſemble to "take Counſel among themſelves, for de- "manding their Pay, or demand it in a mutin- "ous Manner, not only inferior Officers that "are acceſſory thereto, are to ſuffer Death as "the Heads and Ring-leaders, but alſo all the "private

(a) *Art.* 32. (b) *Art.* 46. (c) *Art.* 7. (d) Dutch *Art.* 7. (e) *Art.* 8.

"private Soldiers, who are any Way ingaged "therein. And if any Captain, being privy "thereto, ſhall not ſuppreſs the ſame, or com- "plain of it, he is likewiſe puniſhable to "Death *(a)*. And Officers and Soldiers are "further prohibited to utter any Words tend- "ing to Sedition or Mutiny, upon the like "Pain. Nay, whoſoever hears any mutinous "or ſeditious Words ſpoken, and does not "with all poſſible Speed reveal the ſame to his "ſuperior Officer, is likewiſe declared puniſh- "able to Death. But as to this Crime and its Puniſhment within *Britain*, the Reader is referred to §. 52.

59. By the aforeſaid *Britiſh* Articles *(b)*, *All Officers and Soldiers are ſtrictly prohibited to uſe any traiterous Words againſt the ſacred Perſon of His or Her Majeſty, upon Pain of Death.* And according to the *Dutch* Inſtructions *(c)*, all Curſing or Reviling the States-general, the Council of State, or Governours of Provinces, is in the ſame Manner puniſhable. And indeed, as ſuch Expreſſions are very fitly compared by the *Pſalmiſt (d)*, to the *cutting of a Razor*, ſo hence it is, That *Solomon* moſt ſagely injoins *(e)*, *to forbear curſing the King even in our Thought.* For ſure there is not a more evident

(a) *Art.* 14. (b) *Art.* 8. (c) *Art.* 9. (d) Pſal. 52. 5. Pſal. 59. 8. (e) Eccleſ. 10. *ult.*

evident Demonſtration of a malevolent Diſpoſition of Mind againſt a Prince or State, than ſuch reviling traiterous Expreſſions; the traducing a Government being, we know, the Prelude to the caſting it off; mutinous and ſeditious Words, the forelorn Hope to *Rebellion*. And tho', out of an affected Clemency, the *Roman* Emperours *Arcadius* and *Honorius* (a), refuſed to puniſh ſuch intemperate Speeches, becauſe, ſay they, *Si id ex Levitate proceſſerit, contemnendum eſt; ſi ex Inſania, Miſeratione digniſſimum; ſi ab Injuria, remittendum*; Yet it's obvious to any who have looked into the Lives of theſe two Princes, that this idle and unſeaſonable Clemency, turned to a very ſad Account to them, they having run more Risks of forfeiting both their Crowns and Lives by Mutinies and Rebellions, than any other of all the *Roman* Emperours. Beſides, it would be conſidered, that the above-cited Law, makes no Mention of *Soldiers*, and therefore can never be extended ſo as to comprehend them: For ſince they do break a Prince's Bread, and are maintained at his Charges, a far greater *Modeſty* of Speech, may very juſtly be expected from them than others; and conſequently, even according to the *Roman* Law, when they let looſe their Tongues againſt

(a) *L. un. C. ſi quis Imp. maledix.*

againſt the Government, they are moſt juſtly puniſhed with much greater Severity, than other Men.

60. As to *Wounding*, *Beating*, &c. the modern Martial-Laws are much ſeverer than thoſe of the Ancients. Thus 24 *June* 1631, Two Soldiers in the States of *Holland*'s Service in *Flanders*, were condemned to be ſhot to Death, for drawing their Swords and wounding each other, upon the Head of the Regiment *(a)*. Nay, 'tis now generally capital to draw a Sword in a Camp, Gariſon, *&c.* with Intention to hurt or wound any but the Enemy *(b)*; and, by the *Sea-Laws* of moſt of the maritime Powers, whoever draws a Sword, Dagger, Knife, *&c.* upon his Fellow, is either to have a Knife ſtruck through his Hand, and drawn out betwixt the Fingers, or is to be keelhailed; altho' he have been prevented, and has given no Wound *(c)*. But Beating or Wounding with any other Weapon, is now commonly puniſhed there with the Loſs of the right Hand *(d)*: And as to leſſer Injuries or Affronts, the *Dutch* military Inſtructions ſeem in ſome Meaſure to have introduced again the ancient *Roman* Pain of *Talion*:

(a) Voet. *de Jur. milit Cap.* 4. §. 46. (b) Dutch *Art.* 52. (c) Jo. Loccenius *de Jur. maritim. Lib.* 3. *Cap.* 8. *Num.* 18. (d) Dutch *Art.* 18. *&* 33.

Talion: For, by their late military Law (*a*), if a Soldier give his Fellow a Box on the Ear, he is to receive the like from him on the Head of the Regiment; or, if an Affront of any other Kind be given, he who offers it, is ordained in a publick Manner to repair the other's Honour (*b*). Nor can these Punishments be remitted, even tho' the injured Party should expresly crave it (*c*). But if a Soldier beat, wound, or hurt any Person belonging to the Family where he quarters, he is, for the first Fault, ordained to suffer Three Days Imprisonment, and to be fed with Bread and Water; but, for the second, he is to be cashiered with Disgrace (*d*). Which last Punishment is also awarded to him, who refuses to be reconciled with his Adversary, in Case it cannot be proven who gave the first Offence (*e*).

61. But the *British* Articles are yet somewhat severer on this Head. For according to them, "Whosoever, in Presence of the Com-
"mander in Chief, draws his Sword, with a
"Purpose to do Mischief, or in Anger draws
"it, whilst his Colours are flying, either in
"Battel or upon the March, unless it be a-
"gainst the Enemy, is to be punished with
"Death

(a) *Art.* 34. (b) *Art.* 44. (c) *Art.* 34. (d) *Art.* 18. (e) *Art.* 45.

" Death (*a*). *And as to Affronts*, all reproach-
" ful or provoking Speeches or Acts of one
" Soldier to another, are declared puniſhable
" by Impriſonment, and asking Pardon of
" the Perſon offended, as alſo ſuch further Pu-
" niſhment as a Court Martial ſhall think
" fit (*b*). But if a Soldier beat or abuſe his
" Hoſt, or any belonging to the Family, he
" is ordained to be put in Irons for it, and
" for the ſecond Fault to be further puniſhed;
" and the Party wronged, in both Caſes, to
" have amends made him (*c*). But *raviſh-
ing of Women*, whether belonging to *Friends*
or *Foes*, is abſolutely declared *capital* (*d*).

62. The Method I have mentioned, of pu-
blick Reparation of Affronts or Injuries done
by one Soldier to another, has been undoubt-
edly choſen by modern Princes, to remove
the common Excuſe for *Duelling*, *viz.* That
ſuch Affronts are irreparable any other Way,
than by the injured Party's avenging himſelf,
and challenging the other; a *barbarous Cuſtom*,
wherein 'tis hard to define whether the Wic-
kedneſs or Folly be greater; yet even in our
Days it ſtill maintains its Way, in Spight of
all the Methods either *God* or *Man* has uſed,
to make Soldiers better or wiſer. For as to

(a) *Art.* 12. & 21. (b) *Art.* 38. (c) *Art.* 37. (d) *Art.* 37.

the *Martial Laws* about Duelling, the States of *Holland* in their late Inſtructions *(a)*, have declared, *That whoſoever, without the General's Leave, ſhall ſend a Challenge to another, tho' they do not actually fight, ſhall ſuffer Death for it.* Which Puniſhment is alſo by the ſaid Inſtructions *(b)*, extended to the *Captain of the Guard*, who knows of the Quarrel, and yet ſuffers them to go out to fight. And, by Her late *Majeſty*'s Articles, (for taking off all ſuch Excuſes) 'tis ordained, "That if any "inferior Officer be wronged by his Officer, "he ſhall complain to his Colonel, who is to "redreſs the ſame; or if he do not, the Par- "ty aggrieved is to apply to the general Offi- "cer for Reparation: But if the Accuſation "be falſe, the Complaint is to be puniſhed "at the Diſcretion of a Court-Martial *(c)*. And as to Quarrels betwixt Equals, it is there ordered, "That if any Fray ſhall happen "within the Camp, or Place of Gariſon, in "any of the Soldiers Lodgings, or where they "meet, it is to be enquired into by the Officers "of the Regiment, and the Beginners and Pur- "ſuers thereof puniſhed, according to the "Quality of the Offence. And, by another Article *(d)*, "All Officers and Soldiers are pro- "hibited to ſend a Challenge to any other to

(a) *Art.* 38. (b) *Art.* 43. (c) *Art.* 61. (d) *Art.* 38.

" to fight a Duel, or to upbraid one another for " refuſing a Challenge: And Her *Majeſty* doth " there acquit and diſcharge all Men that " have Quarrels offered, or Challenges made " to them, of all Diſgrace or Opinion of Diſ- " advantage; ſince they but do the Duty of " Soldiers, who ought to ſubject themſelves " to Diſcipline; and they that provoke " them are ordained to be proceeded againſt, " as Breakers of Diſcipline, and Enemies to " Her *Majeſty*'s Service. And it is there fur- ther declared, " That whoever ſhall offend " in either of theſe Caſes, if he be an Officer, " he ſhall be caſhiered; and if a private Sol- " dier, he ſhall ride the wooden Horſe, and " be further puniſhed, as a Court-Mar- " tial ſhall think fit. And if any Corporal, " or other Officer commanding a Guard, ſhall " willingly or knowingly ſuffer either Sol- " diers or Officers to go forth to Duel, it is " there appointed, That he ſhall be puniſhed " for it with Death.

63. Moreover, according to the ſaid Arti- cles, " All Officers of what Condition ſoever, " are impowered to part and quell all Quar- " rels, Frays, or ſudden Diſorders between " Soldiers and Officers, tho' of another Cors, " and to commit the diſorderly Perſons, till " their proper Officers be acquainted there- " with: And whoſoever reſiſts ſuch an Offi- " cer, or draws his Sword upon him, is or-

" dained to be ſeverely puniſhed, as the ge-
" neral *Court-Martial* ſhall appoint *(a)*.

64. Further yet, If Two or more, going into the Field to fight a Duel, ſhall draw their Swords or other Weapons, and fight, tho' neither of them fall upon the Spot, nor dy afterwards of any Wound there received, they are, by the ſaid *Britiſh* Articles, appointed to dy for it *(b)*.

65. And *Laſtly*, In all Caſes of Duels, the Seconds and Carriers of the Challenges are, by Her late *Majeſty*'s Inſtructions, appointed to be taken as Principals, and puniſhed accordingly *(c)*.

66. As to *plundering the Country*, by the military Laws of *France*, *If Soldiers above the Number of Four, without a Paſs or Furlow, preſume to go aſide from the Army, and quarter themſelves in Cities, Villages*, &c. *and refuſe to pay their Hoſt for what they receive, the Country* (in Imitation of the *Roman* Conſtitution) *is impowered and authorized to conveen in Arms againſt them, and, without Fear of being called to Account for the Slaughter, have Liberty to put them all to the Sword (d)*. But in the *Netherlands*, ſuch are only to undergo a *corporal* Pu-

(a) *Art.* 38. (b) *Art.* 38. (c) *Art.* 38. (d) Imbert. *in Enchirid. Jur.* Gall. *verb. Pœnæ Pecuniariæ Pag. mihi* 278.

Puniſhment, which is never extended ſo far as Death *(a)*. Yet, by the *Britiſh* Articles for the Forces beyond Sea, it is enjoined, "That "no Perſon ſhall extort free Quarters, or ſhall "commit any Waſte or Spoil, or deface Walks "of Trees, Parks, Warrens, Fiſh-ponds, "Houſes, or Gardens, tread down or other-"wiſe deſtroy ſtanding Corn in the Ear, or "ſhall put their Horſes into Meadows, with-"out Leave from their ſuperior Officer, upon "Pain of a ſevere arbitrary Puniſhment. And "if any Officer or Soldier exact Money, or "wilfully burn any Houſe, Barn, Stack of "Corn, Hay or Straw, or any Ship, Boat "or Carriage, or any Thing which may "ſerve for Proviſion of the Army, without "Order from the Commander in Chief, he is "to ſuffer Death for it *(b)*.

67. And as to the Forces within *Britain*, 'tis ſtatute in ſeveral *Engliſh* Acts of Parliament made ſince the Revolution, touching Mutiny and Deſertion, *That an Officer deſtroying the Game, ſhall forfeit* 5 ℔ *to the Poor; and the Commander in Chief is to forfeit* 10 *Shillings, for every ſuch Offence committed by a Soldier under his Command.*

68. Moreover, for the eaſier Diſcovery of ſuch Robberies, and that the Actors may be

(a) Dutch *Art.* 14. & 20. *Arg. L.* 11. *ff. de Pœn.*
(b) *Art.* 25.

brought to condign Punishment; and to prevent their alledging that such Spoils were taken from the Enemy, all Soldiers in Places beyond Sea (as I have already observed Tit. 6. §. 23.) are, by the Articles of War, strictly prohibited to sell or dispose upon whatever they shall take from the Enemy, in private Excursions and Parties, any where but in the Camp or Garison; and are ordained to give up a Note of what they have taken, to the Governour, within 3 Hours after they return, that so they may be marked: To the End, that if they be found to belong to Friends or Confederates, they may be restored; and this upon Pain of Death, if such Goods be any where else disposed upon *(a)*. Which capital Punishment, with the Forfeiture of all their Goods, is also very justly extended, by the modern Customs of all *European* Nations, to *Pirates* and *Robbers* at Sea.

69. As to *stealing* from Fellow Soldiers in the Camp or Garison, the Punishment in *France* and the *Netherlands*, is for the most Part *arbitrary (b)*: But if necessary Provisions for the Army be stoln or robbed, not in the Camp, but while they are carrying thither; or if any Violence be done to such as bring Victuals, *&c.* to the Camp or Garison, or

(a) Dutch *Art.* 63, 64. (b) Dutch *Art.* 74.

or their Horſes or Goods taken; the Crime is every where capital *(a)*. The Reaſon of which Severity is, That a few ſuch Robbers or Pilferers may occaſion a whole Army to ſtarve, all Commerce with the Camp being thereby interrupted.

70. *Stealing of Ammunition* is alſo generally capital, unleſs it be the firſt Fault, or ſome other extenuating Circumſtance concur. Which Puniſhment reaches alſo thoſe, who being intruſted with keeping the Ammunition, do *imbezil* the ſame *(b)*; as alſo the Imbezilers of Victuals *(c)*. But, according to the *Engliſh* ordinary Law, *To imbezil Twenty Shillings worth of the Sovereign's Ordnance, Ammunition, or Victual provided for War, for Lucre, or with Purpoſe to hinder the Service, is adjudged Felony, if proſecuted within the Year (d).*

71. *Mutiny for Want of Pay* (as is already remarked) is alſo capital by all modern military Laws *(e)*. But *detaining all or Part of Soldiers Pay*, is now puniſhable in *Hollaud* by caſhiering the Officer *(f)*; and, by a Clauſe in the *Britiſh* Act of Parliament againſt *Mutiny* and *Deſertion*, *No Officer is to be allowed any Sum on Pretence that it had been advanced to any Soldier.*

72. Such

(a) Dutch *Art.* 19.—— Britiſh *Art.* 37. (b) Britiſh *Art.* 46. (c) *Art.* 47. (d) *Stat.* 31. Eliz. 4. (e) Dutch *Art.* 36. Britiſh *Art.* 41. (f) Dutch *Art.* 76.

72. Such Officers as have not *their full Compliment of Men*, or refuſe to draw them out, when the *Commiſſary-General of the Muſters* requires it; as alſo both the *Borrower* and *Lender* of Horſe or Arms for a Muſter, are by the *Dutch* Articles declared puniſhable by caſhiering *(a)*. And by the Inſtructions given by the States of *Holland* to the ſaid *Commiſſaries*, *Whoever lends his Name to fill up the Muſter-Rolls, and is not a Soldier, is to ſuffer Death for it (b)*. But according to Her late *Majeſty*'s Articles for Her Forces beyond Sea, when a *Colonel* or *Captain* diſmiſſes any of his Men, he is forthwith to certify the ſame to the Commiſſary-General of the Muſters, that by their Approbation, ſuch Non-commiſſion Officers or Soldiers were diſcharged, and others taken into their Places reſpectively; and theſe Certificates are to expreſs the Day of each ſuch Soldier's Diſcharge or Death, and who hath been entertained in his Place; and this upon Pain of caſhiering, or an arbitrary Puniſhment *(c)*.

73. Further, by the ſaid Articles *(d)*, all Captains are under the foreſaid Penalty enjoined, to uſe their utmoſt Endeavour to have their Troops and Companies *complete* and *full*,

(a) Dutch *Art.* 69. & 76. (b) *Art.* 7. (c) Britiſh *Art.* 42, 45. (d) *Art.* 43.

full, and no Soldier's Duty is allowed to be done by any other than himſelf; except in Caſe of Sickneſs, Diſability, neceſſary Abſence, *&c.*

74. As to His *Majeſty*'s Forces within the Dominions, by the ancient Law of *England* (a), *A Captain who has not the whole Number of his Soldiers, or does not pay them their due Wages within Six Days after he receives them, forfeits all his Goods and Chattels, and is to ſuffer Impriſonment.* But the ordinary late Anniverſary Acts againſt *Mutiny* and *Deſertion*, contain very ſevere Clauſes touching this Particular: Such as, That Procurers of falſe Certificates, or Makers of them, to excuſe Soldiers for Abſence from any Service, are fined in 50 Pounds, caſhiered, and for ever thenceforth diſabled to ſerve, *&c.* All falſe Muſters are alſo there prohibited, under the Two laſt named Penalties, beſides a Fine of 100 Pounds. And for preventing all Cozenage of this Kind, the chief Magiſtrate of the Place is ordained to be preſent at Muſters; and Muſter-maſters not giving Notice to them, or refuſing them Aſſiſtance, are fined in 50 ℔, and diſcharged from their Office. Further yet, a Perſon falſly muſtered, is by the ſaid Acts ordained to be committed to the Houſe of

(a) *Stat.* 7. Hen. *VII.* 1.

of Correction for Ten Days, and to have his Ears cut off. And if any lend a Horſe to be muſtered not belonging to the Troop, he is to forfeit the Horſe to the Informer, if he was his own; otherwiſe twenty Pounds. A Pay-maſter alſo or Officer, who detains any Pay above a Month, if himſelf have received it, is ordained to be broken, and to forfeit 100 Pounds to the Informer. The aforeſaid Penalty of falſe Muſters, is alſo awarded to ſuch Officers, as bring a falſe Certificate of the Names of ſuch as are ſick, or have Leave to be abſent, or have deſerted; the like if they ſhall muſter any Officer's Servant, or any Perſon by a wrong Name knowingly. *Laſtly*, The Penalty is alſo extended to ſuch Officers as muſter Men before they be brought before a Juſtice of Peace or Magiſtrate, and there declare their free Conſent to be liſted.

75. *Running away from the Enſigns or Colours* during an Engagement, is by the States of *Holland*'s Articles, only puniſhable with a corporal Pain not extending to Death (*a*). Yet the quiting or loſing Colours, has by all Nations ever been looked upon as a Thing moſt ignominious and diſgraceful; and therefore it's now a general Cuſtom for *Standard* or *Enſign Bearers*, when they deſpair of preſerving them

(a) *Art.* 49.

them otherwiſe, to pluck them off the Spear, and either ſave them by a ſpeedy Retreat, or die in the Bed of Honour. An arbitrary corporal Puniſhment alſo by the ſaid *Dutch* Articles (*a*), awarded to ſuch as reveal the *Watch-word* or *Parol*, to Strangers. But Her late Majeſty's Inſtructions for her Forces beyond Sea, are in theſe two Caſes much ſeverer. For by them, *whoſoever runs from his Colours, or doth not defend the ſame to the utmoſt of his Power; or makes known the Watch-word without Order, or gives any other Word but what is given by the Officer, he is to ſuffer Death* (*b*).

76. *To loſe Arms in Battels or Sieges*, is now, as among the Ancients, thought very diſgraceful; and therefore it is an ordinary Article in Capitulations for ſurrendring of Towns, That the Beſieged ſhall march out with their Arms. And by the *Holland* Articles, whoever breaks, loſes, ſells, impignorates, or otherwiſe diſpoſes upon his Arms, is to forfeit half a Year's Pay (*c*); but if he loſe them at Game, he is to be broken with Diſgrace (*d*). And leſt the Simplicity of Soldiers ſhould be abuſed by others, it is appointed, That whoſoever ſhall receive a Soldier's

(a) *Art.* 29. (b) *Art.* 26. & 35. (c) *Art.* 71. (d) *Art.* 73.

Soldier's Arms in Pledge, ſhall forfeit double the Sum lent upon them (*a*). But ſtealing a Fellow-ſoldier's Arms, is by the ſaid Articles puniſhable ſometimes with Forfeiture of three Months Pay; ſometimes, according to the Circumſtances of the Fact, the Offender is to be ſubjected to a corporal Puniſhment (*b*). But by the *Engliſh* Articles for the Forces beyond Sea, "If any Trooper or "Dragoon loſe or ſpoil his Horſe, or a Foot "Soldier his Arms, or any Part thereof, by "Negligence or Gaming, he is to remain in "the Quality of a Pioneer Scavenger, till he "be furniſhed at his own Charge, with as "good as were loſt; and if he be not able, "the one half of his Pay is to be deducted, and "ſet apart for the providing of it, till it be "furniſhed (*c*). Soldiers are thereby alſo pro-"hibited to ſell, or negligently or wilfully "break their Arms, or any Part thereof; or "any Hatchets, Spades, Shovels, Pick-axes, "or other Neceſſaries of War, upon Pain of "being puniſhed at Diſcretion. And where "Arms or other Neceſſaries foreſaid are "pawned, they are to be forfeited and ſeized "on for the Uſe of the Publick.

77. But *ſtealing of Arms* from other Soldiers, as generally all Theft and Robbery committed

(a) *Art.* 72. (b) *Art.* 74. (c) *Art.* 44.

ted by any Perſon in or belonging to the Army, are by Her *Majeſty*'s ſaid Articles declared puniſhable with Death (*a*). And with Reſpect to the Forces within His *Majeſty*'s Dominions, by the old *Engliſh* Law (*b*), *a Soldier that made away his Horſe or Arms, was to ſuffer Impriſonment without Bail, till he ſhould ſatisfie the Party, at whoſe Charge he was ſent out.*

78. But beſides diſpoſing upon Arms, the modern military Law-givers have thought it no ſmall Delinquency in a Soldier, to repair to the *Parade* to keep Guard, wanting any of his Arms; and therefore the States of *Holland* ordain ſuch to be Impriſoned three Days for the firſt Fault, and to ſuffer a ſeverer arbitrary Puniſhment for the ſecond; but for the third, to be ſhot to Death (*c*). And by Her late *Majeſty*'s Articles, "Whoſoever fails "at the beating of a Drum or Sound of a "Trumpet, or upon an Alarm given, to repair "to his Colours, with his Arms decently kept, "and well fixed (unleſs there be an evident "Neceſſity to hinder him from the ſame) is "ordained either to be put in Irons, or to ſuffer "ſuch other Puniſhment as a Court-martial "ſhall think fit. But if a Soldier without rea-"ſonable Cauſe, abſent himſelf, when Warn-"ing

(a) Art. 20. (b) Stat. 2. & 3. Ed. 6. 2. (c) Art 98.

"ing is given for ſetting the Watch by Beat "of Drum, Sound of Trumpet, *&c.* he is ap- "pointed to ride the wooden Horſe, or other- "wiſe to be puniſhed at the Diſcretion of the "Commander (*a*).

79. Further yet, by the modern *French* and *Dutch* Articles (*b*), all Soldiers are prohibited upon Pain of Death, to diſmiſs their Priſoners, even after their Ranſom is paid, without firſt acquainting the General. And this, that it may appear whether thoſe Captives have been Deſerters, or perhaps guilty of ſome ſuch other atrocious Crimes, as render them incapable of being ranſomed.

80. But there remains a yet more barbarous Crime, but too often in theſe degenerate Days, committed beyond Sea, whereof there is not indeed the leaſt Mention in the *common Law*, (perhaps becauſe none of the Ancients had arrived at ſuch a Height of Wickedneſs) and that is, when a Soldier in Battel takes only one or two Priſoners, and thinking it not worth the while to deliver them up to his General, (the Ranſom being ſo ſmall) kills them in cold Blood, after Quarters fairly given. This Crime how execrable and barbarous ſoever, is yet by the States of *Holland*'s late Articles of War (*c*), *only declared puniſhable by Caſhiering and Baniſhment*: Tho' ſome of their Authors make Mention

(a) Art. 34. (b) Dutch Art. 61. (c) Art. 61.

Mention of Deciſions of a much older Date (*a*), where this Barbarity was capitally puniſhed; which is alſo conſonant to Her late *Britannick Majeſty*'s Articles for Her Forces beyond Sea (*b*).

81. Whether the *Guilt* of this inhumane and perfidious Practice, is (as in all other Crimes) greatly inhanſed as well by the Quality of the Offenders, as Multitude of the Sufferers, is a Queſtion that ſure can never be reſolved in the *negative*; or make that the *perfidious* and *deliberate* Murder of Thouſands of Men, acted by Command of *publick Authority*, ſhall not be a greater Crime, than the Slaughter of one or two by a *private Soldier*. And upon this Meaſure, ſome Mens Accounts are like to riſe to a dreadful Height, yet Experience ſadly here verifies the old *poetical* Aphoriſm.

Multi committunt eadem diverſo crimina fato:
Ille crucem pretium ſcaleris tulit, hic diadema.

Nay, as flagrant as it is, we want not ſome notable Examples of it in this *Iſland*; and the Murder in cold Blood of moſt part of the Marqueſs of *Montroſe* his Foot Army the Day after the Battel of *Philiphaugh*, tho' they had fairly

(a) *Particularly one upon the* 10th July 1638. (b) *Art.* 19.

fairly capitulate with the General for *free Quarters*; (nay ſome of the moſt eminent Men in the Nation, who there had ſurrendred on theſe Conditions, being nevertheleſs thereafter condemned by a ſupreme Judicature, and executed) and the ſame Tragedy two Years thereafter reacted upon *M'Donald*'s Men in *Kintire* (and both of them with Conſent and Approbation of our then Governours) are ſo *well known*, and withall ſo *melancholly* Inſtances, that I ſhall forbear further to inſiſt on them, and only wiſh. *That no Man's Memory were qualified to ſuggeſt a much freſher Example.* But to take another Turn,

82. That unaccountable Piece of *Roman* Severity againſt ſuch Soldiers as ſuffered themſelves to be taken *Priſoners*, is no where now practiſed: For by the *French*, *Dutch*, and *Britiſh* Articles, their Pay is appointed to run on, and their Names to ſtand and be recited in the Muſter-rolls, as well as of thoſe who are preſent; weich the States of *Holland* in particular have ſet down in their Inſtructions to the *Commiſſaries* for *Muſters* (*a*).

83. The ſame alſo is now univerſally injoined, with Reſpect to *ſick* and *wounded* Soldiers: Thus in Her late *Britannick Majeſty*'s Articles for Her Forces in *Flanders*, *&c.* "It "is

(a) Art. 14.

"is appointed, That if any Soldier be ſick, "wounded or maimed in Her Majeſty's Ser- "vice, he ſhall be ſent out of the Camp, to "ſome fit Place for his Recovery, where he "ſhall be provided for by the Officer appoin- "ted to take Care of the ſick and wounded "Soldiers, and his Wages and Pay ſhall go on "and be duely paid, till it does appear that "he can be no longer ſerviceable in the Ar- "my, and then he is to be ſent by Paſs to "his Country, with Money to bear his "Charges in his Travel; or ſuch other Pro- "viſions are to be made for him, as Her Ma- "jeſty or Succeſſors ſhall direct *(a)*.

84. And as to the Forces here within His *Majeſty*'s Dominions, there is an *Engliſh* Statute made in the Days of Queen *Elizabeth (b)*, declaring, *That the more Part of the Juſtices of Peace, yearly in their* Eaſter *Seſſions, ſhall have Power to charge every Pariſh with a weekly Relief of maimed Soldiers and Mariners, ſo that no Pariſh pay weekly above ten Pence, nor under two Pence*, &c.

85. *Counterfeiting Sickneſs*, or marching with the Baggage without their Captain's Knowledge, is ſtill in our Days puniſhable at leaſt by Caſhiering with Diſgrace; in which Caſe they get neither Paſs nor Arrears *(c)*.

(a) *Art.* 40. (b) *Stat.* 43. Eliz. 3. (c) Dutch *Art.* 25.

Yet the ſevere *Roman* Laws againſt debilitating or maiming one's ſelf, ſo as to render him unfit for Service, are long ſince generally outdated; our Soldiers now being for the moſt Part voluntarly liſted.

86. *Plurality of Poſts* whether in the ſame or different Regiments, (which I mentioned in the laſt Place) is in the *Netherlands* puniſhed at Diſcretion (*a*): Which takes Place alſo among the *Britiſh* Forces beyond Sea. And for preventing and diſcovering ſuch Abuſes, "It is appointed by Her late Majeſty's Ar- "ticles, That all Commiſſions to Officers in "Pay, ſhall be brought to the Commiſſary of "the Muſters, and Secretary at War, who "are to receive and enter the ſame in a Book "fairly written; with Certification, that no "Commiſſion-Officer, without ſuch Entry, "ſhall be allowed in Muſter (*b*). And further, by a Clauſe in the ordinary anniverſary Act of Parliament againſt Mutiny and Deſertion within the Dominions, "It is ſtatute, "That every Commiſſion-Officer ſhall ſwear on "the Bible, at his Entry, that he gave no "Bribe, *&c.* for obtaining his Commiſſion.

87. Beſides theſe, there are ſeveral other *Rules* and *Articles of War* (with the Penalties awarded to the Tranſgreſſors of them) that of Courſe

(a) Dutch *Art.* 70. (b) *Art.* 41.

Courſe are injoined by moſt Princes and States of *Europe*; and whereof I find no Mention in the *common Law*; ſuch as, *Firſt*, Concerning Soldiers their giving due Attendance on *divine Service*, under Pain both of a pecuniary Mulct, and corporal Puniſhment (*a*). *2dly*, The pecuniary Fines of *Suttlers*, &c. who intertain Soldiers during that Time (*b*). *3dly*, Touching the Mulcts and Penalties of *Swearing* and *Curſing*, and the corporal Puniſhment of *Blaſpheming*, or impugning any Article of *Religion* (*c*). *4thly*, Concerning the capital Puniſhment of profaning or plundering *Churches*, *Chappels*, &c. or offering Violence to *Chaplains*, or *Miniſters* (*d*): For which the Reader is referred to the Articles themſelves. *5thly*, Whoever violates any *ſafe Conduct* or *Protection* given by the Crown, or Commander in Chief, is by the ſaid *Britiſh* Articles, to ſuffer Death (*e*). *6thly*, Soldiers are ordered to *keep Silence* while the Army is marching, imbattelling, or taking up their Quarters (to the End that their Officers may be heard, and their Orders executed) upon Pain of Puniſhment at Diſcretion (*f*). *7thly*, An arbitrary Puniſhment is likewiſe awarded to ſuch, as *ſhoot a Muſquet in the Night*, after the Watch is

(a) Britiſh *Art.* 1, (b) *Art.* 2. (c) *Art.* 3. & 4. (d) *Art.* 5. (e) Art. 13. (f) Art. 18.

ſet (*a*). 8*thly*, The like as to *Victuallers*, who provide *unſavoury Victuals* for the Army (*b*): As alſo, 9*thly*, Such *Victuallers* as entertain Soldiers after the *Tattoe*, or before the *Reveilles* in the Morning (*c*): And 10*thly*, Such *Officers* as force or extort any Thing from *Soldiers* (*d*). All which do but very little vary from what is alſo injoined on thoſe Heads, in the *French* and *Dutch* Articles.

88. *Laſtly*, With Reſpect to the *Britiſh* Forces that are within His *Majeſty*'s Dominions, there are alſo a few ſingular Conſtitutions, no Veſtige whereof is to be found in the *Civil Law*; Thus it is declared in the ſeveral Acts of Parliament made of late againſt *Mutiny* and *Deſertion* (*e*), "*Firſt*, That Soldiers ſhall be "quartered in publick Houſes only, and that "no more Billets ſhall be ordered than there "are effective Soldiers; and if any Officer do "otherwiſe quarter Soldiers, than is there "preſcribed, he is to be underſtood *ipſo Facto* "caſhiered. 2*dly*, That no Wives, Children, "nor Servants of Soldiers ſhall be quartered "in any Houſe without the Owner's Conſent; "and he that ſo quarters them, if a military "Officer, is to be caſhiered. 3*dly*, An Offi-"cer taking Money from the Keeper of an "Inn

(a) *Art.* 32. (b) *Art.* 48. (c) *Art.* 50. (d) *Art.* 62.
(e) *particularly by Stat. Anno* 7. Annæ *Reg.*

"Inn or publick Houſe, for excuſing Quarters "or Diet, is to ſuffer the like Puniſhment. "4*thly*, All Officers, *&c.* are prohibited to "force Waggons to travel more than one Day's "Journey, or force Conſtables to provide "Saddle Horſes, under the Penalty of five "Pounds.

Tit. X.

TITLE X.

Of Courts-Martial.

1. BESIDES the *ſingular* Conſtitutions relating to the Soldiery, which I have remarked in the two preceeding Titles, there yet remains one, *viz.* That by the *Roman* Form, Soldiers had their own *peculiar Judges*, who cognoſced and determined in all ſuch military Proceſſes as came before them, eſpecially in *criminal Cauſes*; which therefore (as naturally ſucceeding the former) ſhall be the Subject of this Title.

2. But before I enter upon it, it will not here be improper to remove a no leſs *common* than *groſs* Miſtake, whereby People generally make promiſcuous Uſe of the Terms, *Council of War*, and *Court of War* or *Court-Martial*; as if they were one and the ſame Thing. But certainly they are vaſtly different, both in the *Form* of their Conſtitution, and in the *End* of their meeting, a Council of War being much like a *private Juncto* in a State, or the *Cabinet Council* of a Prince, with whom he adviſes concerning

concerning the whole Managery of the War; And this Meeting commonly conſiſts of ſuch general Perſons as any Prince or State thinks fit to call; who have commonly their own Preſident, and only offer their Advice, the *negative Voice* being reſerved to the ſupreme Governours, or ſometimes to the Commander in Chief of the Army. Whereas a *Court-Martial* is an ordinary *military Judicature*, for cognoſcing and determining in Cauſes whether *civil* or *criminal*, and puniſhing Delinquents. The firſt of theſe falls not within the Compaſs of our preſent Subject: But as to the other I ſhall ſubjoin a few Remarks.

3. Theſe military Judges then among the *Romans*, were for ſeveral Ages the *Præfecti Prætorio*, an Office of very great *Truſt* and *Honour*, and much reſembling our modern *Colonels* of the *Guards de Cors*, but inveſted with a far more extenſive Power than now they are; but after that that Office was, if not totally ſuppreſſed, yet changed by the Emperor *Conſtantine* the great, into a Kind of *ſuperior civil Magiſtracy*, without any ſpecial Juriſdiction over the Soldiery; there was *another* erected in its Place, for judging in *military Cauſes*; and theſe new Judges were called *Magiſtri Militum*. To them it belonged to determine in all *civil Cauſes* and Controverſies among Soldiers; as alſo to enquire into their *Crimes*, and according to the Kind and Degree

gree of the Fact, to inflict Punishments on the Offenders; so that during the Time that this Constitution subsisted, the other Commanders and Officers had no Power either to cognosce or determine in any Action whether civil or criminal, wherein a Soldier was concerned.

4. Of those *Magistri Militum*, after the Translation of the Seat of the Empire from *Rome* to *Constantinople*, there were two that resided in the *Western Empire*, and five in *the East* (*a*). But the great Inconveniency of this Method, having in Process of Time appeared, it being extremely difficult, if not wholly impossible, for so few Men, to discuss all military Causes that incessantly came before them; whereby many Processes, especially criminal ones, which challenge the quickest Dispatch, were to the great Detriment both of the State and Army, necessarly delayed, if not neglected; therefore the Emperor *Anastasius* found it much more commodious as well for the civil Government, as the Soldiery, to allow those supreme Judges to delegate what Causes they thought fit, to the Officers of the respective Legions (*b*): Which new Form, tho' that Prince does indeed ascribe to his *own Invention*, yet that it was of *a much older Date*, seems not improbable, from a Passage in *Juvenal*

(a) Panciroll. *in Notit. Imp.* Cap. 30. (b) *L. fin. C. de Re militi.*

nal (a), where we find the *Centurions*, even as far back as the Days of the famous *Camillus*, were Judges in criminal Matters.

Legibus antiquis Caſtrorum, & More Camilli
Servato, Miles ne Vallum litiget extra,
Et procul a ſignis; juſtiſſima Centurionum
Cognitio eſt igitur de Milite, nec mihi deerit
Ultio, ſi juſtæ defertur Cauſa Querelæ.

Which alſo we find confirmed by the Suffrage of *Polybius* (*b*), who tells us, That the *Tribunes* and *Centurions* diſcuſſed Proceſſes betwixt private Soldiers; yet if a *General Perſon* was accuſed, this could ſtill only be before at leaſt one of the *Magiſtri Militum (c)*.

5. As to the Place where this *Court-Martial* ſat, 'tis not improbable both from Texts of Law, and *Roman* Authors, that there was a Space in the Camp ſet apart for it *(d)*: Which, whether it was on the Head of the Army imbattelled, (as ſome will have it) or a ſquare Space within the Camp, (according to others) is not very material. Only in the general, the Judges in this Court were ſtrictly enjoined by the Law-givers, to take Care that they did

(a) *Satyr. ult.* (b) *Lib. 6.* (c) *L. 8. C. de diverſ. Offic.* (d) *L. 12. ff. de Re milit. L. 16. §. 1. C. de Erog. milit. Annon. See ſome Quotations out of* Livy, *in* Stewech. *Comment on* Veget. *de Re milit. Lib. 1. Cap. 20.*

did not exceed the Bounds of their *Jurisdiction*, by judging of Persons and in Causes, wherein they had no Power to cognosce or determine (*a*). And upon this Account, I hope it will be no impertinent Digression, a little to examine what Causes, according to the *Civil Law*, properly belonged to *them*; and what to the *Civil Judge* only.

6. And *First*, As to *Civil Actions*, the Jurisdiction of the *Roman* Court Martial was very extensive: For in those, *this Court* was the Judge competent, exclusive of *all others*; and this not only where *one Soldier* conveened *another* (*b*), but even when any *private Man* pursued a *Soldier*; because of the known Rule, *Actor sequitur Forum Rei* (*c*). Yet if a Person was once fairly sisted before the Civil Judge, and during the Dependence of the Action, listed himself a Soldier; in that Case, the Cause could not be avocated from the Judge-ordinary, because of the *Prevention* (*d*).

7. Yet there is no Doubt but a Soldier might *voluntarily* subject himself to the *Civil Judge*. And from this it seems to follow, That if in contracting with a private Man, he should expressly renounce his Privilege, he could

(a) *L.* 12. § 2. *ff. de Re milit.* (b) *L.* 12. *ff. de Re milit. L.* 6. C. *de Jurisdict.* (c) *D. L.* 6. *&* *L.* 2. C. *eod.* (d) *L.* 7. *ff. de Judic. L. fin.* §. 1. C. *de in Jus voc.*

could not thereafter, when purſued, betake himſelf to it; ſince *every Man is at Liberty effectually to renounce the Benefit of a Privilege introduced in his own Favours (a).*

8. But as to *Criminal Cauſes*, Authors are not ſo well agreed about the Competency of the Juriſdiction. It hath been obſerved in the Beginning of the preceeding Title, That Crimes acted by Soldiers are either *common*, viz. *ſuch as may be perpetrated by any other*, ſuch as Murder, Adultery, *&c.* Or they are *purely military*, to wit, *that are committed by a Soldier as ſuch (b).* As to the *laſt* of theſe, the Cognition and Puniſhment of them does irrefragably belong, excluſive of all other Juriſdictions to a *Court Martial (c).* But the Power to cognoſce and determine in the *firſt*, is by *ſome Authors* aſcribed to the *Judge-ordinary*: and by *others (d)* to a *Court of War*; and both Sides adduce Texts of Law, and Paſſages from Claſſick Authors, to ſupport their Opinions: The Diſcuſſion of which Queſtion would afford but little Profit to the *Engliſh* Reader. I ſhall therefore content my ſelf barely to deliver my Opinion in one plain Diſtinction, which will eaſily ſatisfy the Texts and

(a) *L.* 29. C. *de Pact. Junct. L.* 32. §. 4. *ff. ad Senat.* Velleian. (b) *L.* 2. *ff. de Re milit.* (c) *L.* 9. *ff. de Cuſtod. reor.* (d) Voet. *de Jur. milit. Cap.* 7. §. 8.

and Authorities on both Sides, *viz.* That a Soldier, while attending the Army and following the Camp, cannot be drawn to answer for a *common Crime*, before the Civil Judge; nor in that Case will his General be bound to remit him to the Judge-ordinary of the Place where the Crime was committed. But if he be found *elsewhere*, and at Distance from his Colours, the Cognition of the Cause belongs only to the Judge-ordinary, who in that Case will not be obliged to send him up, to be judged and punished by his Commanders.

Modern Laws and Customs relating to this Title.

9. The present Customs of *Europe*, in Reference to the Persons that sit Judges in a Court-Martial, do pretty closely follow the ancient *Roman* Law. For now a-days, that Court is commonly made up of Colonels, Governours of Garisons, and all other Officers of Regiments below a Colonel *(a)*: And in Case there be but few Officers upon the Place, then

(a) Dutch *Art.* 65.

then Serjeants, nay ſometimes the moſt underſtanding among the private Soldiery are admitted (*a*): Only in *French* Courts-Martial, Lieutenants and Enſigns ſtand uncovered, and are barely allowed to offer their Opinion, but have no Votes.

10. This Court, according to the Cuſtoms of foreign Countries, is either a *general* and *high Court* of War, whoſe Buſineſs is to cognoſce and determine in Matters of greater Moment; or when a general Perſon, Field-Officer, *&c.* is accuſed; or to diſcuſs Appeals in Civil Cauſes, (for in *Criminal Proceſſes* no Appeal is allowed) *&c.* or it is a *Regimental Court*, which is held in the ſeveral Regiments, and which he who for the Time commands a Regiment, may call: And this Court judges in all Cauſes criminal, and all Perſons (the Three Field-Officers excepted) belonging to the Regiment; the Colonel or Commander in Chief for the Time, being Preſident.

11. To both thoſe Courts belong alſo Three other Officers, *viz.* the *Judge-Martial* or *Judge-Advocate*, the *Provoſt Martial*, and a *ſworn Clerk*. The *firſt* of theſe informs the Court, and proſecutes the Delinquent in Name of the Prince or State, and undoubtedly ought to be a Man of eminent Probity and Judg-

(b) Pappus *Comment. on the ſaid Art.* 65.

Judgment, and generally is a Lawyer, becauſe moſt of the modern military Laws are derived from the Civil or Municipal Conſtitutions and Cuſtoms; and many Caſes daily occur, about which there are no expreſs Articles of War, and therefore muſt be determined according to the Analogy of the *Common* or *Municipal Laws*.

12. A *Provoſt-Martial-General* is he, who, without any ſpecial Command of his Superiors, has Power to ſeize and commit all Tranſgreſſors of the Articles of War, or ſuch as are guilty of any other groſs Miſdemeanours; and, according to the Quality of the Fault, either to keep them under a Guard or in Irons, till he preſent them to the Court; and is to ſee Sentences put in Execution. Nay frequently he has Orders, by himſelf, without the Solemnity of a Court, to hang up ſuch as he finds ſtraggling, robbing, burning, or plundering; and for that End has a Guard of Light-horſe allowed him. *Laſtly*, From him all Provoſts-Martial of Regiments receive from Time to Time their Orders.

13. The *Clerk of Court* is he, who having ſworn *de Fideli*, makes Records of all their Proceedings; and is a Member neceſſary in all Courts.

14. The Court Martial, whether *General* or *Regimental*, being thus conſtitute, after the Cauſe is fairly laid before them by the Judge-

Advo-

Advocate, they proceed to a minute Examination thereof; and, having heard Parties and Witneſſes, the Cuſtom beyond Sea is, That all Officers of the ſame Quality go apart by themſelves, and adviſe the Cauſe; and having agreed upon the Sentence, the Preſident whiſpers in the Ear of the Clerk, who, after he hath written their ſeveral Opinions, gives them to the Judge-Advocate, who makes that the Sentence of the Court wherein the moſt Opinions agree, which accordingly is ſigned by the *Preſident*, and ſent to the *General*.

15. Very conſonant to theſe Cuſtoms of foreign Countries, are Her late *Majeſty*'s Articles on this Head, for the *Britiſh* Forces beyond Sea. For by them there are eſtabliſhed, not only general Courts-Martial, but the Commiſſion-Officers of every Regiment are allowed to hold ſuch a Court for that Regiment, upon all ſuch Matters as the General or Commander in Chief of the Forces ſhall allow of, as proper for their Determination *(a)*.

16. As to the Number of thoſe who are to ſit in this Court, it is determined by ſeveral *Engliſh* Acts of Parliament (with Reſpect to ſuch Forces as ſtay within the Dominions) to be

(a) *Art.* 51.

be 13 at leaſt, all Commiſſion-Officers, and the Preſident at leaſt a Field-Officer, or Commander in Chief of the Gariſon: And if a Field-Officer be tried, none of the Judges are to be under a Captain. And no Sentence of Death is to be given, unleſs Nine of the Thirteen preſent concur; and if there be a greater Number, the greater Part of thoſe muſt concur, that Part being no leſs than Nine. Further, No Proceeding can be but betwixt Eight in the Morning and One Afternoon. It is moreover ſingularly conſtituted with Reſpect to thoſe home Forces, That all this exeems them not from the ordinary Proceſs of Law. Nor, *Laſtly*, Does the Juriſdiction of a Court-Martial in *Britain*, extend to the *Militia Forces* of the Kingdom.

17. Each of thoſe Judges is by the foreſaid Acts enjoined to take the following Oath, *You ſhall well and truly try and determine according to your Evidence, the Matter now before you, between our Sovereign Lord the King's Majeſty, and the Priſoner to be tried. So help you God.* Theſe Acts of *Parliament* being only temporary, have theſe many Years been renewed of Courſe, with very little Variation from each other.

18. The Three neceſſary Perſons abovementioned, and their reſpective Offices, are alſo exactly determined in Her late *Majeſty*'s ſaid foreign Articles. And *Firſt*, As to the King's

King's Advocate-General or Judge-Advocate, It is appointed (*a*), That in all Criminal Causes which concern the Crown, he ſhall inform the Court, and proſecute on Her *Majeſty*'s Behalf.

19. And as to a *Provoſt-Martial*, his Power and Truſt is ſo great, " That all Officers and " Soldiers are there prohibited to hinder him, " his Lieutenant or Servants, in the Executi- " on of their Office, upon Pain of Death, or " ſuch other Puniſhment as a Court-Martial " ſhall think fit. And all Captains, Officers " and Soldiers, are ordered to do their ut- " moſt to apprehend, and bring to Puniſh- " ment all Offenders, and to aſſiſt the other " Officers and Forces therein, eſpecially the " ſaid Provoſt-Martial, his Lieutenant and Ser- " vants. And if the Provoſt-Martial or his " Officers require the Aſſiſtance of any Officer " or Soldier, in apprehending any Perſon, de- " claring to them that it is for a capital Crime, " and the Party eſcape for Want of Aid and " Aſſiſtance, the Party or Parties refuſing to " aid or aſſiſt, is to ſuffer ſuch Puniſhment as " a Court-Martial ſhall inflict (*b*). *Laſtly*, " The Provoſt-Martial of every Regiment is " to have the ſame Privilege in his own Re- " giment, as the Provoſt-Martial-General

(a) *Art.* 50. (b) *Art.* 57.

" hath in the Army or Camp; and ſuch Fees " alſo as the Court-Martial ſhall allow (*a*).

20. But, for preventing all Abuſes of this Power, it is there further ordered (*b*), " *Firſt*, " That no Provoſt-Martial ſhall refuſe to re- " ceive or keep a Priſoner committed to his " Charge by Authority, or ſhall diſmiſs him " without Order, upon Pain of an arbitrary " Puniſhment. And if the Offence for which " the Priſoner was apprehended, deſerved " Death, the Provoſt-Martial refuſing to re- " ceive and keep him as aforeſaid, is declared " liable to the ſame Puniſhment (*c*). 2*dly*, " If any Perſon be committed by the Pro- " voſt-Martial's own Authority, without " other Command, he is ordained to acquaint " the General or other chief Commander with " the Cauſe, within Twenty four Hours; and " the Provoſt is thereupon ordained to diſmiſs " him, unleſs he have Order to the contra- " ry (*d*). 3*dly*, It is left to the general Court- " Martial to appoint and limit his Fees, as " they ſhall think fit (*e*).

21. In the laſt Place, By the ſaid Arti- cles (*f*), a Clerk is ordained to be preſent at all general Courts-Martial, who is to be ſworn to make true and faithful Records of all the Pro-

(a) *Art.* 51. §. 1. (b) *Art.* 64. (c) *Art.* 64. §. 1. (d) *Art.* 65. (e) *Art.* 53. *in Fin.* (f) *Art.* 53.

Proceedings of that Court. And it is alſo ordered, That there ſhall be ſuch other Officers appointed, both for that, and alſo for the regimental Court-Martial, as ſhall be neceſſary.

22. By our modern Cuſtoms, there is no determinate Place for the ſitting of a Court-Martial; only 'tis commonly at the Lodging or Tent of the Preſident of the Court, or the General. Yet very often they uſe in foreign Countries, as *France*, *Holland*, &c. to hold this Court in the open Fields, where, for the moſt Part, they very quickly diſcuſs the Cauſe; and if it come to a Sentence condemnatory, it is immediately put in Execution, without allowing the Party ſo much as to return within Doors, or order his Affairs.

23. Their Form of Procedure as to Preliminaries, according to the Articles for the *Britiſh* Forces beyond Sea, is, That all the Judges in a general or regimental Court-Martial, ſhall hold the ſame Rank there, as they do in the Army, for Order's Sake. Next, they are ordained to take an Oath in the Words following. *I A. B. do ſwear, That I will duly adminiſter Juſtice according to the Rules and Articles made by Her* Majeſty *for the better Government of Her Forces beyond the Seas, without any Partiality, Favour or Affection, and (where the ſaid Articles do not aſſign any ſpecial Puniſhment) according to my Conſcience, the beſt of*

my Understanding, and the Custom of War in like Cases; And I do further swear, That I will not receive any Present or Gratuity, directly or indirectly, from any Person whatsoever, concerned or to be concerned in any Trial at any Court-Martial, whereof I am or shall be a Member: Nor will I divulge the Sentence of the Court until it shall be approved by Her Majesty, *the General or Commander in Chief; neither will I upon any Account, at any Time whatsoever, disclose or discover the Vote or Opinion of any particular Member of the Court Martial. So help me God (a).*

24. There are also some other general Articles, relating both to their Deportment, and Form of Procedure: Such as, That they shall demean themselves orderly in the Hearing of Causes; and, before giving Sentence, every Judge is to deliver his Vote or Opinion distinctly, and the Sentence to be according to the Plurality of Votes; and if there happen to be an Equality, the President is to have a casting Vote *(b)*. It is there also further ordered, That no Sentence shall be pronounced, until Report be made of the whole Matter by the President to the General, in Order to receive his Directions therein; and when Sentence shall be produced, the Provost-Martial is

(a) *Art.* 52. (b) *Art.* 52.

is to have a Warrant to cauſe Execution be done according thereto (*a*).

25. Further yet, for preſerving Order, and keeping up the Authority of thoſe Courts, it is there alſo appointed, That if any Officer or Soldier ſhall preſume to draw his Sword in any Place of Judicature, while the Court is ſitting, he ſhall ſuffer an arbitrary Puniſhment: And the Provoſt-Martial is there impowered and directed, by his own Authority to apprehend ſuch Offenders (*b*). The like alſo with Reſpect to uſing any braving or menacing Words, Signs, or Geſtures (*c*). *Laſtly*, It is declared, That if a Soldier being committed for any Offence, ſhall break Priſon, the Provoſt-Martial ſhall by his own Authority apprehend him; and the Offender is to ſuffer Death (*d*).

26. I ſhall next proceed, with all Submiſſion, to offer a few Advices to ſuch as have the Honour and Truſt to ſit Judges in a *Court-Martial*, whether *general* or *regimental*.

27. *Firſt* then, When a Party is accuſed, and there ly ſhrewd Preſumptions againſt him, 'tis undoubtedly their Duty to take Care that he be ſecurely committed: Tho', except in ſuch a Caſe, 'tis more than a little

(a) *Art.* 52. (b) *Art.* 58. (c) *Art.* 66. (d) *Art.* 50.

hard to impriſon a Man of intire Reputation, and whoſe former Deportment has been blameleſs, meerly upon idle Reports and Surmiſes. For in that Caſe, tho' he ſhould by irrefragable Evidences clear his Innocence; yet will he ſcarce ever be able to wipe off the *Stain* of his *Commitment*.

28. *Next*, in the general, They would give diligent Heed to what is objected againſt the Priſoner, and carefully examine the Witneſſes; but ſtill with a due Regard to what is alledged by him for his Exculpation. Nor is it proper, nor ſo much as juſt, to detain a Party in long Confinement: But ſo ſoon as poſſible, either to abſolve him, if his Innocence appear; otherwiſe quickly to bring him to a Puniſhment adapted to the Circumſtances of the Perſon, Time, Place, *&c.* It ſeems alſo, generally ſpeaking, ſomewhat inhumane and barbarous to invent new and unuſual Kinds of *Puniſhments* and *Tortures*, or to extend the *Remedy* beyond what the *Diſeaſe* requires. In ſhort, they are not to look on themſelves as *Lawgivers*, but *Adminiſtrators*; and therefore are expreſly enjoined in Her late Majeſty's Articles, as alſo in thoſe of the States of *Holland* (a), *to judge Crimes according to the Laws and Cuſtoms of War.*

29. Some

(a) Britiſh *Art.* 68. Dutch *Art.* 65.

29. Some are of Opinion, That the *Judge-Advocate* ought always to be a Man learned in the Laws. But whatever be in that, surely 'tis highly reasonable for a *Court-Martial*, in difficult Cases, which dip upon the common or municipal Laws, to consult and advise with those, whose Profession enables them to give the propereſt Counsel and Direction.

30. But more particularly, there is absolutely required in those Judges, a *calm*, *sedate*, and *sincere* Temper of Mind, free of all *Partiality* and *Passion*. As therefore I have already remarked from *Cicero*, Four *cardinal Inducements* most necessary in a *Captain General*, so here in the Reverse, I shall in particular take Notice of Four *Passions* or *Affections*, which, as so many Rocks or Shelves, are carefully to be avoided in judging, by all, but especially *military Judges*, viz. *Fear*, *Covetousness*, *Love*, and *Hatred*.

31. As to the First of these, If they expect to found a right Sentence, they are resolutely in judging to lay aside all *Fear*: For 'tis rare to see a Man who is *overawed* by the Power, or *terrified* by the Threats of a great Man, hit upon a right Sentence; and certainly he that is byassed by these, in Spight of Law, Justice, and his own solemn Oath, may very well be said to have given up his *Honour*, nay *Religion* too, to *Cowardice* and dastardly *Fear*, and

and therefore muſt be a very incompetent Judge in other Mens Cauſes, eſpecially where Life or Limb is at the Stake: Nor was it any great Extenuation of *Pilate*'s Crime, that he was overawed into the unjuſteſt Sentence that ever was pronounced, by the impetuous Fury of the barbarous and enraged Multitude. Let therefore our *military Judges*, in all Caſes, but chiefly when cognoſcing and determining in criminal Matters, propoſe to themſelves the tranſcendently noble Pattern of that Oracle of the *Roman* Law, *Papinian*, who by no Threats nor Terrors could be induced to plead in Defence of *Caracalla*'s deteſtable Crime of Fratricide; but generouſly choſe rather to ſubject his Neck to the Stroke of the *Headſman*, than bow to ſo unworthy a Propoſal, or omit the Occaſion of openly declaring his Abhorrence of ſo monſtrous a Crime: And therefore reſolutely told the Emperor, That it was far eaſier to *commit* than to *defend* Paricide.

32. Next Let them carefully avoid the ſordid Crime of *Covetouſneſs*; nor (as they are ſolemnly ſworn) ever ſo much as lend an Ear to Promiſes of Bribes, good Deeds, *&c.* For if Covetouſneſs, that great Idol to which the World bows, be, as the *Apoſtle* tells us (*a*), *the*

(*a*) 1 Tim. 6 10.

the Root of all Evil even in private Men; how much more muſt it be ſo, when once deeply rooted in the Heart of a *Judge*?

33. In the Third Place, They are diligently in judging to lay aſide all Conſideration of *Love*, *Friendſhip*, or *kind Prepoſſeſſion* towards either Party. And indeed, as to this Paſſion, 'tis a Thing which common Experience atteſts to be a moſt forcible Corrupter of the Underſtanding, which being by native Right deſigned a *Judge*, is by this interrupted in its Office, not permitted to make thoſe impartial Enquiries, on which a right Sentence ſhould be founded: But (as it fares ſometimes with Magiſtrates in popular Inſurrections) forced to give Countenance to its own Violation, to own not its proper native Dictates, but ſuch as are preſented to it by the prejudicate Fancy. And as it thus lays Reſtraint upon the *ſuperior* Part of the Mind, keeps the Underſtanding in Fetters, ſo (to complete the Inverſion) it takes off all Ties from the *inferior*; gives not only *Licence*, but *Incitation* to the other Paſſions to take their freeſt Range, to act with the utmoſt Impetuoſity. And therefore ſure there can be nothing more improper, nay dangerous for a *Judge*, than in judging to entertain ſo treacherous a Gueſt in his Breaſt.

34. They are no leſs carefully, in the laſt Place, to diveſt themſelves of all *Hatred*, *Prejudice*,

judice, and *Diſguſt*; which Experience tells us has done no leſs Harm in judging, than the laſt named Affection: For when Men take up Piques and Diſpleaſures, then often even *indifferent Actions* of the diſliked Perſon muſt partake of his Fate, and every *Mole-hill* Fault muſt be ſwelled into a *Mountain*. And much more may this be ſaid of the more *ſolemn* Frenzy of *deep Malice* and *deliberate Revenge*, where the Fury wants the Allay of being *tranſient* and *ſhort lived*, is imbodied into Complexion and Temper, and grows inveterate into Nature. For where that prevails in a Judge, 'tis ſcarce poſſible for him who hath thus ſhaken Hands with *Chriſtianity*, to keep his *Integrity* in judging.

35. But here we are to remember, That all Forms and Solemnities ſo religiouſly obſerved in *Civil Judicatories*, are generally diſregarded in *Courts-Martial*; nay, a ſummar Sort of Proceſs is expreſly injoined in them, by a ſpecial Edict of the States of *Holland (a)*; And by Her late *Britannick Majeſty*'s Articles for Her Forces in the *Netherlands*, &c. *all military Controverſies are appointed to be ſummarly heard and determined at a Court-Martial (b)*: Which Order takes Place eſpecially in Caſe of Crimes, where, if one be taken in the very Act,

(a) 29 April 1589. (b) *Art.* 54.

Act, he is immediately to be ſentenced, and the Sentence ſtraightway put to Execution. So that it's a received Cuſtom beyond Sea, That ſuch as are condemned to dy, are preſently hanged upon a Tree, without ſo much as allowing them to *ſet their Houſe in Order.*

36. *Laſtly*, As to the Competency or Incompetency of this Court, in the various Caſes above-mentioned, tho' that (as I have already hinted) be ſomewhat controverted among learned Men, with Reſpect to the Text of the *Roman* Law, yet the preſent Practice of all *Europe* confirms what I have delivered as my Opinion. Thus practical Authors, and particularly *Chriſtinæus (a)*, takes Notice of an Edict publiſhed by the Duke *d'Alva*, in the Year 1570, where he appoints, "That "a *Court-Martial* ſhall be the ſole Judge in "all military Crimes; but not common Ones, "unleſs committed in the Camp, or upon a "March, or in Winter Quarters, or laſtly, "unleſs it were committed by one Soldier "againſt another. But except in theſe Caſes, "he appoints the Civil Judge to hear and determine in all common Crimes committed "by a Soldier. Which Edict, becauſe of its Agreeableneſs to natural Equity, is now generally received, and retained by the *Hollanders*

(a) *Deciſ. Tom.* 5. —— *Deciſ.* 221. *N.* 16.

ders themſelves, even after they had ſhaken off the *Spaniſh* Yoke; they having thereafter in a publick Edict, declared (*a*), *That in Caſe of a common Crime committed by a Soldier, both the Civil and Military Judge are competent; ſo that there is Place for Prevention.* And therefore if the Criminal be firſt attached and committed, by Warrant from either of them, the other can have no further Pretence to judge in the Cauſe, but it is to be heard and finally determined where it began: Which has frequently been ſo decided, according to *Sande* and *Groenwegen* (*b*). Nay, even in Caſe of a military Crime, if it be very atrocious, the Party is left at Liberty, by the Cuſtom of the *Netherlands*, to appeal either to the *Council* of *State* in *Holland*, or to their ſupreme *Court-Martial*, eſpecially if the Crime be committed by an *Officer* (*c*).

37. Next, In civil Cauſes, both the Judge-ordinary and the military Courts, by the Cuſtom of foreign Parts, have a cumulative Juriſdiction over the Soldiery (*d*).

38. As to the Cuſtom of *Britain*, what hath been ſaid with Reſpect to common and military

(a) 29 April 1589. (b) Sande *Deciſ. Friſ. Lib.* 1. *Tit.* 1. *Defin.* 4. Groenweg. *ad L.* 6. C. *de Juriſdict. omn. Jud.* (c) Voet. *de Jur. milit. Cap.* 7. *Num.* 9. (d) Groenweg. *ad L.* 6. C. *de Offic. diverſ. Judic.*

tary Crimes, by the Law of foreign Countries, does undoubtedly take Place in *Scotland*; whereof we have ſo many and ſo late Inſtances, as ſuperſede the Neceſſity of quoting them. But in *England* they are ſomewhat tenacious of their ancient Conſtitution, whereby no Man can be tried, but before the *Judge ordinary*, by a Jury of his *Peers*; ſo that all military Diſcipline would neceſſarly ſink there, did not the Parliament, yearly in Time of War, make ſpecial temporary Acts, impowering His *Majeſty* to grant Commiſſion to the Commander in Chief of His Forces, to call *Courts-Martial* as Occaſion requires. Yet as to the *Britiſh* Forces beyond Sea, His *Majeſty* may make ſuch Articles of War as he judges proper; and according to theſe they are judged by a *Court-Martial*.

39. But in *civil Cauſes*, according to the *Britiſh* Articles *(a)*, a Court-Martial can in nowiſe hear or determine. Only there is an Exception of ſuch civil Controverſies between *Soldiers* and their *Officers*, or between *Soldier* and *Soldier*, as relate to their *military Capacities*. And if in that Caſe any of the contending Parties judge himſelf aggrieved by the *Regimental-Court*, he is allowed to appeal to the *general*

(a) *Art.* 54.

general Court-Martial; who by the said Articles are injoined to take Care, *That if the Party appealing make not good his Suggestion, Recompence be made to the other for the Trouble and Charge of such an Appeal (a).*

(a) *Art.* 55.

Tit. XI.

TITLE XI.

Of the ancient and modern Forms of diſmiſſing Soldiers; and disbanding an Army.

1. HAVING in the ſecond Title ſpoken of the various Forms of *levying* Soldiers, it now remains to treat of the ancient and modern Methods of *diſmiſſing* them; ſince without a regular Miſſion no Soldier can be *liberate* from the Service.

2. This *Diſmiſſion* of Soldiers among the *Romans* was either *honourable*, or *ignominious*, or *indifferent* (*a*).

3. The *honourable Miſſion was, when Soldiers got their Paſſes as a Reward of their faithful Service during the whole Time they were by Law appointed to carry Arms* (*b*). The Period for

(a) *L.* 2. §. 2. *ff. de his qui Not. infam. L.* 13. §. 3. *ff. de Re milit.* (b) *L.* 2. §. 2. *ff. de his qui Not. infam. L.* 13. §. 3. *ff. de Re milit. L.* 8. *ff. de excuſ. Tutor. L.* 9. *C. quand. Provoc. non eſt neceſſ.*

for a Foot Soldier's Service was not always the ſame among the *Romans*; for in the Infancy of that State, we find them bound ſometimes to ſerve thirty, ſometimes fourty Years: But under the Reign of *Auguſtus*, the *Pretorian Cohorts* were obliged to carry Arms only twelve Years, and all others ſixteen (*a*); which his immediate Succeſſor *Tiberius* extended to twenty Years, with Reſpect to all the Foot, at which it continued ſo long as that Empire ſtood (*b*).

4. But the Horſemen, after ten Year's Service only, were appointed to bring their Horſes to the publick *Forum*, and preſent them before the *Cenſors*, and there obtained their Paſs, either with Honour or Ignominy, according to their Deſervings (*c*).

5. The Effect of this *honourable Miſſion* was, that thenceforth they enjoyed all the Privileges of *Veterans*, which indeed were very conſiderable (*d*). But it was in proper ſpeaking, only underſtood to take Place in *private Soldiers*, but nowiſe in *Commanders*. Yet even with Reſpect to *Generals*, this honourable Miſſion was at leaſt *implied*, when they were called

(a) Sueton. *in vita* Auguſti. (b) Tacit. *annal. Lib.* 1. *Valtrin de Re milit. Lib.* 6. Cap. 5. (c) Plutarch *in Apophtheg. de* Pompeio. (d) L. 3. C. *de his qui non implet Stipend.* L. 2. *de Re milit.*

called Home by the Prince or Senate, and another ſent to ſucceed them *(a)*.

6. The *ignominious Miſſion*, which we now call *caſhiering*, was, *when a Soldier was broken with Diſgrace, by Way of Puniſhment of ſome Crime committed by him (b)*: And of this caſhiering it is remarkable, that by the *Roman* Law, *Infamy* attended it of Courſe *(c)*: Only it was neceſſary that the Crime ſhould be expreſſed in the Sentence of Miſſion *(d)*. It is further obſervable, that this as a Puniſhment could not only be awarded to *private Soldiers* Crimes, but even *Commanders* of what Rank ſoever, were not exeemed therefrom; ſo that even the *Conſular* Dignity afforded no Immunity in this Caſe *(e)*.

7. Beſide *Infamy*, there were other Puniſhments that generally attended this Kind of Miſſion; ſuch as, that thereafter they could enjoy no Place of publick Truſt or Preferment *(f)*; nor were ſuffered to appear at Court *(g)*; neither were they exeemed from Torture (as other *Veterans* were) in Caſe of ſhrewd Preſumptions againſt them as guilty thereafter of a Crime, *&c. (h)*. In ſhort, they

(a) *L.* 25. *ff. de teſtam. milit.* (b) *L.* 2. §. 2. *ff. de his qui not. infam. L.* 13. §. 3. *ff. de Re milit.* (c) *L.* 1. *ff. de his qui not. infam.* (d) *L.* 2. §. 2. *ff. d. Tit.* (e) *d. L.* 2. *pr. ff. de his qui not. infam.* (f) *L.* 3. *C. de Re milit.* (g) *L.* 13. §. 3. *ff. eod.* (h) *L.* 8. *C. de Queſtion.*

for a Foot Soldier's Service was not always the ſame among the *Romans*; for in the Infancy of that State, we find them bound ſometimes to ſerve thirty, ſometimes fourty Years: But under the Reign of *Auguſtus*, the *Pretorian Cohorts* were obliged to carry Arms only twelve Years, and all others ſixteen (*a*); which his immediate Succeſſor *Tiberius* extended to twenty Years, with Reſpect to all the Foot, at which it continued ſo long as that Empire ſtood (*b*).

4. But the Horſemen, after ten Year's Service only, were appointed to bring their Horſes to the publick *Forum*, and preſent them before the *Cenſors*, and there obtained their Paſs, either with Honour or Ignominy, according to their Deſervings (*c*).

5. The Effect of this *honourable Miſſion* was, that thenceforth they enjoyed all the Privileges of *Veterans*, which indeed were very conſiderable (*d*). But it was in proper ſpeaking, only underſtood to take Place in *private Soldiers*, but nowiſe in *Commanders*. Yet even with Reſpect to *Generals*, this honourable Miſſion was at leaſt *implied*, when they were called

(a) Sueton. *in vita* Auguſti. (b) Tacit. *annal. Lib.* 1. *Valtrin de Re milit. Lib.* 6. *Cap.* 5. (c) Plutarch *in Apophtheg. de* Pompeio. (d) L. 3. C. *de his qui non implet Stipend.* L. 2. *de Re milit.*

called Home by the Prince or Senate, and another sent to succeed them *(a)*.

6. The *ignominious Mission*, which we now call *cashiering*, was, *when a Soldier was broken with Disgrace, by Way of Punishment of some Crime committed by him (b)*: And of this cashiering it is remarkable, that by the *Roman* Law, *Infamy* attended it of Course *(c)*: Only it was necessary that the Crime should be expressed in the Sentence of Mission *(d)*. It is further observable, that this as a Punishment could not only be awarded to *private Soldiers* Crimes, but even *Commanders* of what Rank soever, were not exeemed therefrom; so that even the *Consular* Dignity afforded no Immunity in this Case *(e)*.

7. Beside *Infamy*, there were other Punishments that generally attended this Kind of Mission; such as, that thereafter they could enjoy no Place of publick Trust or Preferment *(f)*; nor were suffered to appear at Court *(g)*; neither were they exeemed from Torture (as other *Veterans* were) in Case of shrewd Presumptions against them as guilty thereafter of a Crime, *&c. (h)*. In short, they

(a) *L.* 25. *ff. de testam. milit.* (b) *L.* 2. §. 2. *ff. de his qui not. infam. L.* 13. §. 3. *ff. de Re milit.* (c) *L.* 1. *ff. de his qui not. infam.* (d) *L.* 2. §. 2. *ff. d. Tit.* (e) *d. L.* 2. *pr. ff. de his qui not. infam.* (f) *L.* 3. C. *de Re milit.* (g) *L.* 13. §. 3. *ff. eod.* (h) *L.* 8. C. *de Question.*

forfeited whatever *Reward* they could have pretended to for their Hazards and Fatigues in the Service.

8. Yet sometimes, and when the Fault was *small*, Soldiers were only dismissed with Disgrace, *for a Season*; which being elapsed, the Infamy also ceased (*a*); because otherwise the *Punishment* would have exceeded the Demerit of the *Crime*. Yet so exact were they in apportioning *Punishments* to the Degree of the *Fault*, that a Soldier thus suspended, and returning to his Colours when the Day elapsed, tho' he was indeed restored to the same Rank and Degree in the Army which he formerly enjoyed, yet was he incapable of any other Preferment, till he had continued to serve in the old Station for as as long Time as he was absent (*b*).

9. The other Kind of *Mission*, which they called *Indifferent*, was, when a Soldier was discharged, without any Mark either of *Honour* or *Disgrace* put upon him. This Kind of discharging was either of *Necessity* or of *Grace*. The first of these was, *when a Soldier got his Pass, because of old Age, Sickness, Infirmity*, &c. *which rendred him utterly unfit for Service* (*c*): And even

(a) *L.* 1. C. *de his qui in exil. dat. arg. L.* 8. *ff. de postul. L.* 3. §. 1. *ff. de Decurion.* (b) *L.* 2. C. *de his qui in exil. dat. L.* 15. *ff. ad municip.* (c) *L.* 2. §. 2. *ff. de his qui not. infam. L.* 13. §. 3. *ff. de Re milit.*

even this, generally ſpeaking, was a Kind of *honourable Miſſion* (tho' contradiſtinct from that which is *ſpecially* ſo called) yet Soldiers diſcharged on this Account, did not enjoy the Privileges of *Veterans* (*a*).

9. Yet, becauſe it would have been unjuſt intirely to deprive ſuch a one of his Reward (*b*), therefore in Proportion to the Time he ſerved, he had his *Immunity* (like other *Veterans*) from all publick burdenſome Offices (*c*): So that if after five Years Service he got his Paſs or Diſmiſſion, he enjoyed the Immunity for a Year; if after eight Years, he had three Years Freedom; if after ſixteen, he enjoyed the Privilege for four Years; but if after twenty, the Immunity was during Life (*d*).

10. But here it's to be remembred, That this Diſmiſſion on Account of Age, Infirmity, *&c.* was not *lightly* nor *of Courſe* granted by the *Roman* Generals: For before it could be impetrate, there behooved to preceed a ſolemn Declaration of *Phyſicians, that the Perſon was utterly unfit for further Service* (*e*). And if thereafter it was diſcovered, that the Diſmiſſion was *obreptitiouſly* procured, the Impetrant was ordained to be fined in 5 *lib.* of Gold (*f*).

(a) *L.* 2. C. *de his qui non implet. Stipend.* (b) *L.* 13. §. 2. *ff. de Re milit.* (c) *d. L.* 2. C. *de his qui non implet. Stipend.* (d) *L.* 8. §. 3. *ff. de excuſ. Tutor.* (e) *L.* 6. C. *de Re milit.* (f) *L.* 2. C. *de diverſ. Offic. & apparit. judic.*

11. The other Kind of this *indifferent Miſſion*, was that of *Grace*; and that is alſo twofold, the one (coming neareſt to that which was *honourable*) was, when a Soldier by the meer Favour and Indulgence of the Prince, was diſmiſſed before he had ſerved out the Time appointed by Law *(a)*. Touching which there is a Queſtion, Whether a Soldier ſo diſcharged will have a Time allowed him, for enjoying the common Immunities of *Veterans*, only proportional to the Time he ſerved, or if he will have the Benefit of them *during Life*? But the *laſt* of theſe is moſt conſonant to the general Rules of Law, which puts the moſt extenſive Interpretation upon the *Royal Munificences (b)*.

12. Beſide this, there was yet another Kind of *Miſſion by Grace*, which ſome call the *extraordinary* Miſſion, *viz.* when a Man was diſcharged, who had procured himſelf to be liſted, only for the Sake of Immunity from publick perſonal Burdens. But neither *Honour* nor *Infamy* attended ſuch a Diſcharge *(c)*.

13. As to *diſmiſſing* or *disbanding* whole Armies at once, we have little or nothing on Record either in the *Roman* Law or Authors, with Reſpect to that. The Reaſon whereof ſeems

(a) *L.* 2. §. 2. *ff. de his qui not. infam.* (b) *L.* 3. *ff. de conſt. princ.* (c) *L.* 2. §. 2. *ff. de his qui not. infam.*

ſeems to lie in the Rareneſs of the Occaſions of ſuch a Diſmiſſion: For during the Seven hundred Years that interveened betwixt the laying the *Foundation* and the *Meridian Height* of that powerful State, there having occurred but three *Spiramenta Temporum* (as *Tacitus* calls them) wherein *Janus* his Temple was cloſed, and the *Romans* had Peace with all their Neighbours; it's no ſtrange Thing that they were not ſo well acquainted with the Method of disbanding intire Armies. Yet there is no Doubt, but upon Concluſion of a Peace, providing they had no Wars with other Nations, their Armies were disbanded, immediately after their triumphant Entry into *Rome*. After which, upon Concluſion of that notable univerſal Peace (at which Time, by the Way, came into the World the *Prince of Peace*) we read of large Parcels of the Lands of ſuch as had been *proſcribed* during the civil Wars, allotted to *Auguſtus* his *Veteran* Troops, whereof we find *Virgil* thus complaining *Eclog.* 1.

Impius hæc tam culta novalia Miles habebit?
Barbarus has Segetes? en quo Diſcordia Cives
Perduxit miſeros? en queis conſevimus Agros?

But whether Soldiers disbanded in that Manner, before the ordinary Time of their Service was elapſed, did enjoy all the Privileges

leges competent to *Veterans*, I am not able to determine, tho' it's not improbable they did.

Modern Laws and Cuſtoms relating to this Title.

14. According to the later Cuſtoms of *Europe*, there is no other Time prefixed (as has been obſerved *Tit.* 2.) for a Soldier's Service, than the End of the War: The Reaſon whereof is, That Levies now a Days being for the moſt part *voluntary*, it's difficult to get together a competent Number of Men of one Nation; and therefore few get their Diſcharge, except in Caſe of Age, Infirmity, Diſability by Wounds, lingring Diſeaſes, *&c.* Only by an *Engliſh* temporary Act of Parliament *Anno Annæ Reg.* 7. which has been frequently ſince renewed, *ſuch as voluntarly liſt themſelves, are declared free at the End of Three Years Service, if they pleaſe.*

15. As to the various Forms of *diſmiſſing* Soldiers, their Diſcharge is always now a Days underſtood to be *honourable*, (providing they have a written Paſs) unleſs the contrary be expreſſed. But if ſuch a Paſs be wanting, a private Soldier is preſumed a *Deſerter*. And with Reſpect to the *Engliſh* Forces beyond Sea,

Sea, there is an old Statute of *Henry* VI (a) *Appointing Officers to arreſt Soldiers, who within the Term limited come on this ſide the Sea, without Letters Teſtimonial of their Captain; and were ordained to retain them, till the Cauſe of their Return ſhould be tried.* Which differs little from what is cuſtomary in our Days.

16. Some *Immunities* and *Privileges* are now alſo commonly granted by Princes and States to disbanded Soldiers, but theſe for the moſt Part are but temporary. One Inſtance I have already given of ſuch an Indulgence granted in *England* after King *Charles* II. his Reſtauration; and two others much like to it, upon Concluſion of the Peaces of *Reſwick* and *Utrecht*. Beſides, there are alſo ſeveral temporary Acts of Parliament made in *Scotland*, concerning the Immunity of the Heirs of ſuch as were killed in the Service from *Ward*, *Relief*, *Marriage*, *Non-entry*, &c. Which have been already remarked.

17. The *ignominious Miſſion* is alſo ſtill in Uſe, and for the moſt Part takes rather Place in *Officers* than *private Soldiers*, it being rarely a Puniſhment to ſuch, unleſs ſome other concur, as commonly it does. The Ceremony of this, which is always expreſſed in the Sentence of the *Court-Martial*, is *drumming*

(a) *Satt.* 18. Hen. 6. 19.

ming out of the Army, *breaking* their *Sword* over their Head by the Hangman, *&c.* after which they are precluded from any Immunity or Privilege competent to Soldiers honourably diſmiſſed.

18. The *temporary ignominious Miſſion* is now in Deſuetude with Reſpect to *private Soldiers*, but ſomething like it is daily practiſed againſt *Officers*, who are guilty of ſmaller Tranſgreſſions. But in that Caſe, ſuch a Suſpenſion is not attended with *Infamy* even during their Abſence; nay, for the moſt Part they receive their Pay during that Time, and are allowed to go whither they will, but ſometimes are confined to their Lodgings.

19. The *third* Kind of *Miſſion* I have mentioned, muſt undoubtedly take Place in all Times and Places, and by the modern Cuſtoms of moſt *European* Nations, the aged, ſick, wounded, *&c.* are diſpoſed into convenient *Hoſpitals*, which is a far more *ſubſtantial* Privilege than any, nay all put together that the *Roman* Soldiery enjoyed.

20. The *Paſs of Grace* may be now warrantably granted by any *Colonel* to thoſe of his own Regiment. Nay, it ſeems that in *England* even *Captains* of Companies, have taken upon them to diſmiſs their Men: And in particular it hath lately been an ignoble Practice of ſome *recruiting Officers*, to liſt Men for the *Low-countries*, and thereafter diſmiſs them for

for a Piece of Money; which probably occaſioned a Clauſe to be inſert of late, in the ordinary *annual Act* for recruiting (*a*), *Prohibiting any liſted Soldier during his Abode in* Britain, *to be diſcharged from the Service, without Conſent of the Colonel or Field-Officer commanding in his Abſence, in Writing; under Pain of caſhiering to the Officer, and the Soldier to be holden as a Deſerter.*

21. As to the *extraordinary Miſſion*, which I have mentioned in the laſt Place, that Practice of liſting for the Sake of the Benefit of *military Immunities* and *Privileges*, gave lately Occaſion to inſert a Clauſe in the ordinary *recruiting Act*, which was only to laſt for a Year or thereby; the Preamble of which Clauſe is, *That it had become cuſtomary for Bankrupts*, &c. *to get themſelves liſted, to evite perſonal Diligence, tho' they did not actually ſerve*; Therefore the ſtatutory Part ordains, *That (there being no leſs than Twenty Pounds due to one Creditor) the pretended Soldier ſhall within Two Months after he is diſcharged upon his Privilege by a Judge, be actually ſent into Her Majeſty's Service beyond Seas; and in Caſe he go not, then after the Two Months he ſhall have no more Privilege nor Protection as a Soldier.* But this Clauſe was repealed by a following

(a) *Anno* 10. Annæ *Reg.*

lowing Act of that same Session, *viz.* the ordinary annual Act against *Mutiny* and *Desertion.*

22. The whole Army, or greater Part of it, is commonly disbanded upon Conclusion of a *Peace.* But, to prevent Officers their going into foreign Services, and so leaving the State destitute of able Commanders of their Army, in Case of a sudden War breaking out again, it hath lately been the Custom of most Countries of *Europe*, to entertain a considerable Number of *Officers* of *disbanded Regiments*, even during Peace, upon *Half Pay.* But these belonging to no Regiment, nor having any Command in the Army, are certainly to be ranked with such as are entertained in *Hospitals*; and therefore, as they cannot lawfully claim the *Privileges*, so neither are they to be subjected to the common *Punishments* of Soldiers, nor tried in Cases of Crimes, by a *Court-Martial*; but, like other Subjects, may justly claim the *common Benefit* of being tried in the ordinary Form by a *Jury of their Peers*, in all Countries where that Manner of Trial takes Place.

23. A *Peace* being concluded, or even a *Town* only surrendered upon *Conditions*, it has always been usual for either Party, sometimes for both, to give *Hostages*, for Security of the Performance of the Articles. These *Hostages* can be only given by a *Prince* or *State*,

State, who for that Service may make Choice of any of their own Subjects they pleaſe; a Government having an *eminent* Power, not only over the *Perſons* and *Fortunes*, but even the *Actions* of their Subjects. Yet whatever Damage the Party thereby ſuffers, is undoubtedly to be made up by the Publick, to him or his Repreſentatives. And if there be more than one of the ſame Rank, and yet one only required to go, unleſs *Reaſons of State* determine otherwiſe, 'tis moſt equitable to decide the Matter by *Lot*.

24. In Caſe of Non-performance of the Articles agreed upon, and for which *Hoſtages* were given; the Enemy may indeed, in the Strictneſs of the *Law of Nations*, put the *Hoſtages* to Death; but in the Court of *Conſcience*, ſuch a Practice can never be ſo much as tolerable.

25. By the Laws and Cuſtoms of the *Romans*, Hoſtages were much more harſhly uſed, than in later Times; for the *Civil Law* appoints their Goods (at leaſt ſuch as are *immoveable*) to be confiſcated, as belonging to Captives (*a*). But now they may both freely *acquire* and *poſſeſs* Goods of all Sorts, and bequeath them to whom they pleaſe (*b*).

26. Unleſs

(a) *L.* 31. *ff. de Jur. Fiſc.* (b) Grot. *de Jur. Bell. & Pac. Lib.* 3. *C.* 2. *§.* 53.

26. Unleſs *Hoſtages* have given their *Parol* not to go away, their Departure can neither be imputed as a *Fault* to themſelves, or thoſe that ſent them. But if they receive them back, this undoubtedly diſſolves the whole Agreement, and therefore juſtifies a new War (*a*).

27. It is not unfrequent alſo, That when contending Parties cannot be brought to agree upon Articles of *Peace*, and both of them are ſufficiently weary of the *War*, that a *Truce* or *Ceſſation of Arms* is ſtipulated, to laſt for long or ſhort Space, as Reaſons of State or the Neceſſity of their Affairs direct them.

28. A Truce or Ceſſation of Arms, is a *ſolemn Agreement, whereby (the War ſtill continuing) all Acts of Hoſtility are for a Time ſuſpended.*

29. *The War*, I ſay, *is ſtill underſtood in this Caſe to continue*; For ſince there can be no middle State betwixt Peace and War, and it being *poſſible*, nay *frequently* falling out, that the War may remain, tho' it do not exert it ſelf in any outward Acts: And on the other Side, there being no Peace here concluded, a *Truce* muſt neceſſarly be referred to a State of War.

30. From

(a) Grot. *d. Loc.*

30. From this it may be very regularly inferred, That the agreed Time of Ceſſation being expired, there needs no publick Denunciation to make the renewing of Hoſtilities warrantable; ſince the temporary Impediment being removed, the State of War (which was rather *aſleep* than *extinct*) does of it ſelf re-commence, or rather goes on and continues.

31. Theſe *Ceſſations* are (as has been already obſerved) either long or ſhort as Parties can agree. Particularly in all Ages and Places, a few Days Truce for *burying the Dead*, has rarely been denied; neither indeed can it, without groſly impinging upon the *Law of Nations* and Humanity it ſelf.

32. The Reaſon that Burial of the Dead is ſo agreeable to the Deſires of all Nations, ſeems in the general to be, That Man being the nobleſt of all ſublunary Creatures, it would be no ſmall Indignity to humane Nature, if even his Body were expoſed to be devoured by Beaſts: Which therefore, when it happens, has ſtill been looked upon as a very great Inhanſment of the Calamity. Thus *Virgil* (*a*),

——— *Non te optima Mater*
Condet Humi, patriove onerabit Membra Sepulchro:
Alitibus

(*a*) Æneid. 10.

Alitibus linquere Feris, aut Gurgite Mersum
Unda ferat, Piscesque impasti Vulnera lambent.

And *God* himself, when threatning wicked Princes, tells them, *They shall be buried with the Burial of an Ass, drawn out and cast forth beyond the Gates of* Jerusalem (*a*): And *that Dogs shall lick their Blood* (*b*). But particularly among *Christians*, decent Burials are look'd upon as a Kind of Pledge of the *Resurrection*. By all which 'tis pretty evident, That this last Duty to Mens Bodies, is performed, not so much to this or that Man, as to *humane Nature* it self; and therefore can with no Colour of Justice or Humanity be denied even to mortal Enemies.

33. But when Cessations of Arms are for any considerable Time agreed upon, or from Time to Time renewed (whereof we had a very late Instance) it is commonly for facilitating the speedy Conclusion of a *Peace*. And this undoubtedly all (especially *Christian*) Princes and States, ought during the whole Course of a War, to have mainly in their View. War, we know, as it interrupts all the *Pleasures*, so it marrs and destroys all the *Profits*

(a) Jerem. 22. 19. (b) 1 Kings 21. 19.

Profits of a Nation; which we find elegantly deſcribed by the Prophet *Joel (a)*, *The Land is as the Garden of* Eden *before them, and behind them a deſolate Wilderneſs.* A Truth too often and too ſadly exemplified in our Days. But Peace, as it is the *Duty*, ſo no leſs is it the *Intereſt* and *Bleſſing* of Chriſtians, nay of all Men; it being that comprehenſive Enjoyment, upon which all others are dependent, and which is to our *Civil* Capacities, the ſame that Health is to our *Natural*; the Thing by which we reliſh and taſte all our Comforts.

34. And here I might take a very apt Occaſion to bring up the Rear of all the foregoing Conſiderations, with a large *Panegyrick* on Peace, and a ſolemn Declamation againſt War in general, and particularly among Chriſtian Princes and States, as the unhappy Fountain of ſo many and ſo great Miſchiefs. But that is an Evil that has been ſo often arraigned, that it will be needleſs to repeat thoſe Charges which all Authors moral and divine have laid againſt it: Specially conſidering how ſmall the Hopes of Succeſs are like to be; there being ſcarce any Hope that a private Whiſper ſhall be heard by thoſe, who are deaf

to

(a) Joel 2. 3.

to the loudest Calls of Heaven. In short, this Itch of War among *Christians* is a Disease wholly desperate, and reserves its Cure to Omnipotency.

FINIS.